

ORIGINAL

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK - PART 7

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PEOPLE OF THE STATE OF NEW YORK,

Case No.:
539-07

-against-

LAMAR WHITEHEAD,

Defendant

-----x
TRIAL TRANSCRIPT

March 26, 2008
210 Center Drive
Riverhead, New York

B E F O R E :

THE HONORABLE JAMES HUDSON,
Suffolk County Judge

For the People:

THOMAS J. SPOTA, ESQ.
District Attorney of Suffolk County
Economic Crimes Bureau
North County Complex
Building 77, Veterans Memorial Highway
Hauppauge, New York 1788
BY: RAPHAEL PEARL, ESQ.,
BY: JODI FRANZESE, ESQ.,
Assistant District Attorneys

For the Defendant:

The Law Offices of
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Reported By:
Jennifer Maue,
Senior Court Reporter

FILED
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CLERK OF SUFFOLK COUNTY

1 People v. Lamar Whitehead

2 THE CLERK: Case on trial, People
3 versus Whitehead. All parties present outside
4 the presence of the jury.

5 THE COURT: Thank you.

6 The court had reserved decision on
7 the defendant's motion for a mistrial based
8 upon the purported failure to turn over Brady
9 material, namely the fact that a witness, a
10 Mr. Taneja, had failed to identify the
11 defendant.

12 Do you wish to be heard further at
13 this point in time, Mr. Keahon, before the
14 court rules?

15 MR. KEAHON: No, your Honor.

16 THE COURT: Do the people wish to
17 be heard further?

18 MR. PEARL: I think what we said at
19 the side bar was on the record.

20 THE COURT: Yes, pursuant to the
21 case of *People vs. Robinson*, 280 A.D.2d, 687,
22 and after reviewing other cases such as *People*
23 *vs. McDonald*, 287 A.D.2d, 655, as well as
24 *People vs. Baxley*, found at 84 N.Y.2d 208,
25 which states that "Brady material does apply

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2 not just to exculpatory material but also to
3 material which could be used to impeach the
4 testimony of a witness", that this information
5 does constitute Brady material.

6 The question becomes what is the
7 remedy at this point in time. Under the case
8 of *People vs. Allen*, 196 A.D.2d, 976, (2'd
9 Dept) 1993, leave for appeal denied 83 N.Y.2d
10 868, and *People v. Franco*, 189 A.D.2d 589 (1st
11 Dept), leave for appeal denied at 81 N.Y.2d
12 970, the court's attention at this time should
13 focus on the overriding need to eliminate
14 possible prejudice to the defendant that could
15 arise from this.

16 Courts have also held that
17 dismissal is generally not appropriate as well
18 as the extreme remedy of a mistrial. Under
19 the circumstances, considering the evidence
20 that was withheld, the people acted in good
21 faith. I do not find this to be a willful
22 violation. Good faith is immaterial in a
23 Brady violation, the court feels that the
24 people will be -- the appropriate remedy is
25 that the people will be directed to have Mr.

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2 Taneja ready willing and able to testify, to
3 resume his place on the witness stand, subject
4 to reopening cross-examination, by Mr. Keahon,
5 on the point in question. The people will not
6 be allowed redirect examination.

7 This cross-examination will consist
8 of the material which was brought to the
9 attention of the court through Mr. Keahon's
10 skillful cross-examination of Det. Gabriele.

11 Your exception to the court's
12 ruling will be noted at this time, Mr. Keahon.

13 MR. KEAHON: Yes, judge. It is my
14 understanding that you did find a violation of
15 Brady.

16 THE COURT: Yes, I did.

17 MR. KEAHON: Okay. Your Honor,
18 obviously, I renew my motion for a mistrial.
19 I do not want the witness recalled for me to
20 question him. The damage has been done. I
21 should have been provided with the information
22 at the appropriate time prior to the start of
23 the trial so that I had an opportunity to
24 cross-examine in a meaningful way that
25 witness. The time has gone by, the detectives

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2 have spoken with him. It would be a trap, I
3 believe, that I would be entering into, and it
4 would be damaging and prejudicial to my client
5 to go any further than I have. And most
6 respectfully, I deny the offer of recalling
7 the witness, and me, the opportunity to
8 cross-examine.

9 THE COURT: You mean you're
10 declining the offer.

11 MR. KEAHON: Yes. Thank you.

12 MR. PEARL: We did have Mr. Taneja
13 ready willing and able to testify today,
14 coming in from the city. So the record is
15 clear, from the people's perspective, what Mr.
16 Taneja would have testified to was that not
17 that there was a negative i.d. but that in
18 fact he had too many customers at his business
19 to ever make any kind of i.d. and therefore it
20 was the people's position, it was not a
21 negative i.d. -- there was no nothing, he had
22 no knowledge of anybody because he has too
23 many customers. That was the reason the
24 people didn't believe we had to notice it.

25 I think I said it on the record,

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2 but I can't remember.

3 THE COURT: It is the court's
4 feeling that case law has evolved and under
5 *People vs. Robertson*, that such material
6 should be noticed to the defendant.

7 MR. KEAHON: Judge, respectfully,
8 to comment on what Mr. Pearl has said. I
9 don't adopt what he says the witness would
10 testify to. We know the detective testified
11 that he showed him a picture and he couldn't
12 identify him. That's what this record shows.

13 THE COURT: Thank you.

14 MR. PEARL: I did speak to Mr.
15 Taneja.

16 THE COURT: Well, remember the
17 witness advocate rule, I won't ask you to
18 affirm what a witness would or would not say
19 before the court other than the people
20 followed the court's direction to have this
21 person ready for testimony.

22 I understand your reasons, Mr.
23 Keahon, for declining to accept the court's
24 remedy. Your exception will be noted. Thank
25 you.

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2 Turning then to the second motion
3 for mistrial based upon the comments that were
4 made by the prosecution during the time in
5 which Mr. Whitehead was trying on a jacket.
6 We discussed a cautionary charge to the jury.
7 My understanding, Mr. Keahon, is that you wish
8 to give that cautionary charge, and once
9 again, to emphasize to the jury that your
10 client is under no duty to testify before this
11 court.

12 MR. KEAHON: Yes, that is my
13 request, judge.

14 THE COURT: Thank you. That
15 cautionary instruction will be given as the
16 remedy and the motion for a mistrial is
17 denied. Your exception will be noted to the
18 court's ruling in that regard, as well.

19 MR. KEAHON: Thank you, judge.

20 THE COURT: Is there anything else
21 to place on the record before I bring in the
22 jury? I'll give the cautionary instruction
23 before receiving any further evidence.

24 MR. KEAHON: Thank you, judge.

25 I have no objection.

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2 Yes, judge -- well, no, I'll do it
3 when they're offered.

4 THE COURT: Thank you, very much.

5 Is there anything else to place on
6 the record at this time?

7 MR. KEAHON: No, your Honor.

8 THE COURT: All right, then. My
9 compliments to the jury, officer. Their
10 presence is requested.

11 (The following occurred in open
12 court with the jury present):

13 THE CLERK: Case on trial, People
14 versus Whitehead. The jury and all parties
15 are present. Counsel waive the roll?

16 MR. KEAHON: I do.

17 MR. PEARL: I do.

18 THE CLERK: Thank you.

19 THE COURT: You'll recall, the
20 people made a request, words to the effect
21 they have no objection as long as they "get
22 the opportunity to cross-examine the
23 defendant. It is testimony at this point."

24 I charge you that such a remark is
25 contrary to the law and I am strongly

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2 emphasizing this to you, trying on a jacket is
3 not testimony. It is a demonstration for your
4 consideration. To call it testimony is not
5 correct, and it must not be considered as such
6 by you. And as I have charged you already in
7 the past, and I will do so in the future, and
8 I do now under our system of law, no defendant
9 has a duty to testify or to call any witnesses
10 or to explain his action in any way in this
11 case. The defendant may not testify and may
12 not present evidence. You may not infer
13 anything unfavorable to the defendant from
14 this fact. That is the law enshrined in our
15 constitution.

16 You must disregard the comment by
17 the prosecutor in this regard. You cannot
18 consider his comment. You must strike it from
19 your minds. You cannot allow it to influence
20 your judgment in any way. Can all of you
21 follow my instructions?

22 THE JURY: Yes.

23 THE COURT: Is there anyone who
24 cannot? I'll ask each one of you
25 individually?

1 DIRECT/Det. Friberg

2 (The Jury is polled)

3 THE COURT: Thank you, all. The
4 people may proceed and call their next
5 witness.

6 MR. PEARL: Your Honor, the people
7 call Det. Friberg.

8 (The Witness is sworn)

9 THE CLERK: Detective, state your
10 name for the record, spelling your last name.
11 We need your shield number and your command.

12 THE WITNESS: Det. John
13 F-R-I-B-E-R-G, Shield 1229, Command 3212.

14 THE CLERK: Thank you.

15 Thank you. Good morning, once
16 again, detective.

17 Although you'll be asked questions
18 by a person at the lectern would you be so
19 kind to face the jury when you give your
20 answers and speak into the microphone.

21 DIRECT EXAMINATION

22 BY MR. PEARL:

23 Q. Det. Friberg, are you currently employed?

24 A. Yes, I am.

25 Q. By whom?

1 DIRECT/Det. Friberg

2 A. The Suffolk County Police Department.

3 Q. And in what capacity are you so employed?

4 A. I'm a detective.

5 Q. And how long have you been employed by the
6 Suffolk County Police Department?

7 A. Approximately 19 years.

8 Q. How long have you been a detective?

9 A. Approximately five years.

10 Q. What is your current assignment?

11 A. I'm assigned to the Computer Crimes Unit.

12 Q. And what if anything are your duties and
13 responsibilities with the Computer Crimes Unit?

14 A. My duties entail investigating any crimes
15 related to computer-related crimes, and also
16 conducting forensic examinations for other units in
17 the police department.

18 Q. Do you have any training regarding
19 computer forensics?

20 A. Yes, I do.

21 Q. Can you please tell the jury your training
22 involving computer forensics?

23 A. I received numerous -- I've attended
24 numerous training courses, approximately two to three
25 weeks per year.

1 DIRECT/Det. Friberg

2 Q. And do you hold any certifications?

3 A. Yes, I do.

4 Q. Tell the jury what if any certifications
5 you hold?

6 A. I have obtained a bachelor's degree in
7 computer information systems, of the two
8 certifications related to computer forensics that I
9 hold, one is from Guidance Software, which is the
10 company that manufactures the forensic software that
11 I utilize most of the time. That certification is
12 called the ECEC, which is the Encase Certified
13 Examiner Certification.

14 Q. Detective, tell the jury how you go about
15 analyzing a computer, generally?

16 A. What I do when I analyze a computer, I
17 take the computer, I remove the media from the
18 computer, such as the hard drive. I then connect
19 that to what is called -- I use a fast block device,
20 it is a write protection device, I connect it to that
21 device so no changes are made to the computer media
22 that I'm analyzing.

23 Q. Detective, one second. You indicated you
24 had removed the hard drive. What is a hard drive?

25 A. The hard drive is the storage area within

1 DIRECT/Det. Friberg

2 the computer for long-term storage.

3 Q. Then you indicated you use a fast block
4 device, is that correct?

5 A. Yes.

6 Q. What is a "fast block device"?

7 A. That is the write protection device when I
8 connect it to there, and when I'm going to look at
9 that hard drive or make an image of it, it ensures no
10 changes are made to that media.

11 Q. When you say you make "an image" of the
12 hard drive, what do you mean by that?

13 A. I create an exact duplicate of the
14 information that is available on the hard drive, all
15 the information available on it.

16 Q. Why do you do that?

17 A. So I have an accurate representation of
18 the information that was on the hard drive at the
19 time that I obtained it.

20 Q. When you do your analysis, what
21 specifically are you analyzing?

22 A. I analyze all the data that was available
23 on the hard drive. I create the image and I look at
24 that duplicate image.

25 Q. When you analyze the computer, you analyze

1 DIRECT/Det. Friberg

2 the actual mirror image of the hard drive you made?

3 A. Correct.

4 Q. Why don't you analyze the original hard
5 drive?

6 A. I want to make sure nothing is changed in
7 the hard drive. I want to make sure it is, it is in
8 the same condition as it was when I received it.

9 Q. How do you go about analyzing the mirror
10 image of the hard drive?

11 A. I analyze the mirror image of the hard
12 drive using a computer program Encase for Software.
13 That software allows me to look at all the files and
14 all the data that was on the hard drive, even data
15 from files that have been deleted.

16 Q. When you say "all the data" on the hard
17 drive, what do you mean by that statement?

18 A. Well, like I said, I can look at the data
19 for all the files that are currently still on the
20 hard drive, as well as files that have been deleted.
21 Typically when a file is deleted, the information
22 isn't removed from the hard drive. The index or
23 pointer to that information is just removed, but I
24 can still actually go to the hard drive and look at
25 where that information is stored.

1 DIRECT/Det. Friberg

2 Q. Is there a name for that type of storage
3 on the computer?

4 A. That type of storage from stuff that has
5 been deleted, or pointers to what has been deleted,
6 that is referred to as unallocated areas of the hard
7 drive. Allocated areas mean it is allocated to a
8 file. Unallocated means it is no longer allocated to
9 the file but it is still out on the hard drive.

10 Q. Detective, did there come a time when you
11 came into possession of a computer system, Serial No.
12 N824CD1005690?

13 A. Yes.

14 Q. And when?

15 A. January 30th of 2006.

16 Q. And how did you come in receipt of that
17 computer system?

18 A. I received that from Det. Gabriele.

19 Q. What type of computer system was it?

20 A. It is a Gateway laptop computer.

21 MR. PEARL: Your Honor, may I have
22 People's 151 shown to Det. Friberg?

23 THE COURT: Yes. Officer, if you
24 would?

25 (Hanging)

1 DIRECT/Det. Friberg

2 THE COURT OFFICER: People's

3 Exhibit 151.

4 Q. Detective, do you recognize People's 151?

5 A. Yes, I do.

6 Q. What if anything do you recognize People's
7 151 to be?

8 A. It is the Gateway laptop that I received
9 from Det. Gabriele that I was referring to.

10 Q. How do you know that to be the same
11 Gateway laptop that you received from Det. Gabriele?

12 A. Because I placed an evidence tag on the
13 laptop with the case number, my name, the date that I
14 received it. It is in my handwriting and the tag is
15 still on the back of the laptop.

16 Q. Can you hold the computer system up and
17 show the jury where the tag is?

18 A. The white tag over here (indicating).

19 Q. Let the record reflect my right-hand side
20 of the computer system, your left-hand side?

21 A. Correct.

22 THE COURT: The record will so
23 indicate.

24 Q. Is there a serial number on that computer
25 system?

1 DIRECT/Det. Friberg

2 A. Yes, there is.

3 Q. Please read that serial number of that
4 computer system into the record?

5 A. It is "N824CD10056690."

6 Q. Thank you. Detective, what if anything
7 did you do with that computer system after coming
8 into receipt of it on January 30th, 2006?

9 A. Well, I removed the hard drive from the
10 laptop.

11 Q. How did you do that?

12 A. There is a lid on the -- on the bottom of
13 the hard drive, of the laptop, here. I removed the
14 screw from that lid, and the hard drive is underneath
15 that lid. I disconnected it from the laptop.

16 Q. What if anything did you do next?

17 A. I created a photocopy of the top of the
18 hard drive, and I connected that hard drive up to a
19 fast block device, and utilizing the Encase for
20 Software, I created a forensic exact image of the
21 data that was available on that hard drive.

22 Q. Detective, when you removed the hard drive
23 from that computer system?

24 A. Yes.

25 Q. Was there any information indicating the

1 DIRECT/Det. Friberg

2 manufacturing date of that hard drive?

3 A. Yes, there was.

4 Q. What if anything was the manufacturing
5 date of the hard drive?

6 A. November of 2004.

7 Q. When you received that computer
8 system -- is the computer system in the same
9 condition as when you received it but for having the
10 tag that you placed on it?

11 A. Yes. Actually, I took the battery out of
12 the case, here, and taped it to the case and then
13 just put this evidence tape on it and my label.

14 Q. What if any component or peripheral
15 systems were associated with that computer system
16 when you received it on January 30th of 2006?

17 A. This laptop computer has a Linksys
18 wireless access card that is inserted into the side
19 of the laptop, here.

20 Q. In fact, when you received that computer
21 system, was the Linksys wireless card inserted as it
22 is today?

23 A. Yes.

24 Q. Have you ever removed that card from the
25 computer system?

1 DIRECT/Det. Friberg

2 A. Yes, I have.

3 Q. And can you tell the jury what is a
4 Linksys wireless card?

5 A. A wireless access card is just a type of
6 network card that allows you to connect to a network,
7 wireless, so you don't have to plug in the wired
8 cable to it, to connect into a network and perhaps
9 into the Internet after that.

10 This wireless will talk to wireless access
11 points that are normally hard-wired into other
12 network devices.

13 Q. So that computer system was capable of
14 looking into the Internet?

15 A. Yes.

16 Q. Through a wireless Internet router?

17 A. Yes.

18 Q. Are you familiar with the term "war
19 driving"?

20 A. Yes, I am.

21 Q. What if anything is war driving?

22 A. War driving is the process of taking a
23 wireless capable device, such as a laptop with a
24 wireless card in it, and driving around and looking
25 for wireless access points.

1 DIRECT/Det. Friberg

2 Q. Detective, when you analyzed that computer
3 system, were you able to determine what type of
4 software package was on the hard drive?

5 A. Yes, it had a Microsoft Windows XP
6 operating system.

7 Q. How were you able to determine that?

8 A. That information is stored in the registry
9 files of the hard drive.

10 Q. Were you able to determine whether
11 Microsoft Windows XP software was installed on that
12 computer system?

13 A. Yes, I was.

14 Q. When was it installed?

15 A. December 29th of 2004.

16 Q. In fact, is that consistent with the hard
17 drive being manufactured in November of 2004?

18 A. Yes.

19 Q. Can you explain why?

20 A. Typically, the hard drive manufacture is
21 separate from the laptop manufacture. The hard drive
22 is made by one company, and it is sold to the laptop
23 company, in this case Gateway, who then puts it in
24 the laptop and installs the operating system and
25 sells it.

1 DIRECT/Det. Friberg

2 Q. Detective, did there come a time that you
3 searched the mirror image of that hard drive?
4 Correct?

5 A. Yes.

6 Q. What if anything were you searching that
7 hard drive for?

8 A. I was requested to search for information
9 relating to any identity thefts, as well as
10 information relating to the ownership or operation of
11 the laptop.

12 Q. And you did that in the manner you
13 previously testified to, about how you analyzed
14 computers?

15 A. Yes.

16 Q. In reference -- did there come a time when
17 you searched that computer for pictures?

18 A. Yes, I did.

19 MR. PEARL: Your Honor, may I have
20 this marked as People's 182.

21 People's 212.

22 THE COURT OFFICER: People's
23 Exhibit 212 marked for identification only.

24 (People's Exhibit 212, marked for
25 identification)

1 DIRECT/Det. Friberg

2 THE COURT: Thank you, officer.

3 BY MR. PEARL:

4 Q. Detective, do you recognize what has been
5 marked for identification as People's 212?

6 A. Yes, I do.

7 Q. What if anything do you recognize People's
8 212 to be?

9 A. These are some of the photographs that I
10 recovered off of the image of the laptop that I
11 created in this case.

12 Q. Are those an exact reproduction of the
13 images that you were able to view on the hard drive
14 of that laptop computer system?

15 A. Yes.

16 MR. PEARL: Your Honor, may I have
17 these three exhibits marked People's 213, 214,
18 and 215.

19 THE COURT OFFICER: People's 213,
20 214 and 215, for identification only.

21 THE COURT: Thank you.

22 (People's Exhibits 213-215, marked
23 for identification)

24 Q. Detective, do you recognize what has been
25 marked for identification as 213, 214 and 215 for

1 DIRECT/Det. Friberg

2 identification?

3 A. Yes, I do.

4 Q. What if anything do you recognize those
5 exhibits to be?

6 A. These are portions --

7 Q. Generally speaking?

8 A. -- of files that I recovered off of the
9 image of the hard drive, that I was analyzing in
10 reference to this case.

11 Q. Once again, those are exact reproductions
12 of the documents that you -- the documents you found
13 on that hard drive system?

14 A. They are portions of the documents that I
15 recovered off the hard drive.

16 Q. They're in the same condition as when you
17 printed them out?

18 A. The parts that remain, yes.

19 MR. PEARL: Your Honor, People move
20 212 through 215 into evidence.

21 THE COURT: Thank you.

22 Thank you, officer. Show them to
23 defense counsel, please.

24 (Hanging)

25 MR. KEAHON: Thank you.

1 DIRECT/Det. Friberg

2 No objection on 212. No objection
3 on 215. I'd like to be heard on two of the
4 documents.

5 THE COURT: Yes. See you at side
6 bar.

7 (The following occurred at side
8 bar):

9 THE COURT: I'll hear you, counsel.

10 MR. KEAHON: Exhibit 214 has no
11 date so we don't know whether it is within the
12 time period of the Indictment, or not.

13 And 213 has a date on it of
14 September 1, 2005, which is clearly outside
15 the date.

16 THE COURT: Do you wish to be heard
17 as to any of the other ones at this time while
18 we're at side bar?

19 MR. KEAHON: No, I have no
20 objection to the other ones.

21 MR. PEARL: The only purpose these
22 exhibits are being offered is for control and
23 possession of the computer system. The people
24 aren't offering it for the truth of anything,
25 including the date of the computer. It is a

1 DIRECT/Det. Friberg

2 weight question and an admissibility question.

3 THE COURT: Mr. Keahon, anything
4 further?

5 MR. KEAHON: Yes, judge.

6 Who cares, respectfully, whether or
7 not he has these items on his computer in
8 September of 2005? It is not relevant to any
9 of the proof that we've taken.

10 THE COURT: Well, something like a
11 driver's license found at a particular
12 location, after an event, can still be used to
13 infer ownership or possession or control at an
14 earlier time. The court is inclined to agree
15 with the people, that the objection goes to
16 the weight if any the jury will afford this
17 evidence but not to its admissibility
18 particularly in light of the redactions which
19 the court has directed the people, to remove
20 any that I feel to be possibly prejudicial
21 information.

22 Over your objection, your exception
23 will be noted. They will be admitted into
24 evidence.

25 MR. PEARL: Those redactions have

1 DIRECT/Det. Friberg

2 already been reviewed by Mr. Keahon and they
3 are all acceptable. That is my understanding.

4 THE COURT: Thank you.

5 (The following occurred in open
6 court):

7 THE COURT: Officer, the record
8 will reflect that People's 212 to 215 have
9 been admitted into evidence.

10 MR. PEARL: After those are marked
11 in, may I publish those to the jury using the
12 presenter.

13 THE COURT: Yes.

14 THE COURT OFFICER: 212 through
15 215, marked and received into evidence.

16 MR. PEARL: Thank you, officer.

17 (People's Exhibits 212-215, marked
18 for identification and received in evidence).

19 BY MR. PEARL:

20 Q. Detective, I'm showing you what's in
21 evidence as People's 212. You testified these were
22 photographs you found off of the computer system that
23 you were analyzing?

24 A. Yes.

25 Q. And is this all the photographs or just a

1 DIRECT/Det. Friberg

2 sampling of the photographs?

3 A. Just a sample.

4 MR. KEAHON: Could you put it more
5 in focus for me? Thanks. Can you make it a
6 little lighter?

7 Q. Detective, what is number one on this
8 document?

9 A. It is a file called Picture 009.JPG. It
10 was located in the Documents & Setting Owner Profile,
11 My Documents, Picture, Picture Folder.

12 Q. Where was this second photograph recovered
13 from?

14 A. That was the same folder, and it's titled
15 Picture 010.JPG.

16 Q. Where was that photograph, or JPG,
17 recovered from?

18 A. That was the same folder.

19 Q. The next photograph?

20 A. That was the same folder, also.

21 MR. KEAHON: Can you make that a
22 little clearer?

23 MR. PEARL: I don't think it is
24 going to come in any more in focus. Can you
25 see it.

1 DIRECT/Det. Friberg

2 MR. KEAHON: Yes, thanks.

3 Q. The next photograph. From where did you
4 get that?

5 A. That was the same folder.

6 MR. PEARL: Can the jury see?

7 THE JURY: Yes.

8 Q. That was -- My Documents, the Owner
9 folder?

10 A. The Profile is called "Owner". Then it is
11 My Documents, My Picture, My Pictures, picture
12 folder.

13 That is also in My Documents, same folder.

14 That one is the same folder, also.

15 Q. Here is the next photo contained in this
16 document?

17 A. Yes. That is the same folder.

18 Q. That photograph?

19 A. That one is in the same folder also.

20 Q. That photograph?

21 A. That one is in the same folder also.

22 That was from the same folder also. And
23 that one also. And that was the same folder.

24 Q. That was the same folder also?

25 A. And that was the same folder.

1 DIRECT/Det. Friberg

2 Q. And if you could slide that over to the
3 left a little?

4 A. Actually, that is in the Documents and
5 Setting, Owner, My Documents, My Pictures, Kodak
6 pictures folder. That is in the Kodak Pictures
7 folder, also. The top one is the Kodak Pictures
8 folder. If you can zoom that out a little bit? A
9 little bit more, please.

10 That is in the My Pictures picture folder.
11 It is is the My Documents, My Picture, picture
12 folder. That one is the same as the last one, and
13 that one is the same as the last one also. That's the
14 same as the last one, also. And that is the same one
15 as the last one.

16 Q. Once again, is that all the photographs
17 contained on the computer system?

18 A. No, it's not.

19 Q. Were there other photographs contained on
20 that computer system depicting that male in the blue
21 suit?

22 A. Yes, there were.

23 Q. By the way, when you analyzed this
24 computer system, were you able to determine how many
25 users were on that computer system?

1 DIRECT/Det. Friberg

2 A. Well, there were -- there was one profile
3 that was actually utilized on that system.

4 Q. What was the one profile on that computer
5 system?

6 A. It was called, "Owner."

7 Q. Are you familiar with the Microsoft
8 Windows XP software package?

9 A. Yes.

10 Q. When you say there was one profile,
11 meaning "Owner", what if anything do you mean by
12 that?

13 A. There is one profile that is utilized on
14 that computer. There were several other profiles
15 that were not utilized and being logged into.
16 Typically, different users can create their own
17 profiles, and you would notice that if you were
18 starting the Windows XP operating system, you would
19 see a different icon for each user that you could
20 click into, and they would have their own set of My
21 Documents, and their own Desktop, and the like. This
22 computer only had the Owner Profile utilized.

23 Q. I'm showing you what is in evidence as
24 People's 213? Do you recognize People's 213.

25 A. Yes.

1 DIRECT/Det. Friberg

2 Q. In fact, in the left-hand corner, do you
3 recognize that handwriting?

4 A. At the bottom right-hand corner,
5 that -- yes, my handwriting, my initials, and my
6 shield number.

7 Q. What if anything do you recognize People's
8 213 to be?

9 A. That is a file that I recovered off of
10 that computer, or a portion of a file that I
11 recovered off that computer -- that laptop.

12 Q. From where specifically did you recover
13 this file?

14 A. That file, was in a folder called
15 "Recycler". That recycler folder is typically -- or
16 it is actually -- it's represented on the computer by
17 the Recycle Bin. So when you delete a file and it
18 goes to the Recycle Bin, the more formal name in this
19 computer system is actually Recycler, that is the
20 file I found it in.

21 MR. KEAHON: Can I have the number.

22 MR. PEARL: 213.

23 Q. What if anything is People's 213,
24 specifically?

25 A. That is a file, it was called FAX1.TIF.

1 DIRECT/Det. Friberg

2 That is an image file. The top of it -- the front
3 page appears to be a fax cover sheet and there's some
4 information on the top of that page that looks like
5 information that would come over from a fax machine.
6 The cover page says, "To: Lamar Whitehead."

7 Q. What is an "image file"?

8 A. An image -- it is a graphical
9 representation of a file.

10 Q. Page 2 of People's 213, this was also part
11 of that document?

12 A. Yes.

13 Q. But for the redacted portions, it is in
14 the same condition as it was when you printed it out
15 from the hard drive?

16 A. Yes, it is.

17 Q. It lists an applicant name of "Lamor
18 Whitehead"?

19 A. Correct.

20 Q. Social Security Number ending in 3869.
21 Applicant Address, 92 Howland Avenue, Teaneck, New
22 Jersey?

23 A. Yes.

24 Q. This was an additional page of that same
25 document?

1 DIRECT/Det. Friberg

2 A. Yes.

3 Q. But for the redacted portion, it is in the
4 same exact condition as when you printed it out?

5 A. Yes, it is.

6 Q. What name does it list on this document?

7 A. "Whitehead", "Lamor", does that twice, and
8 then "Whitehead", "Lamor Miller".

9 Q. With the Social Security Number ending in
10 3869?

11 A. Yes.

12 Q. Take a look at what is in evidence as
13 People's 214. Do you recognize this document?

14 A. Yes, that is a portion of a document that
15 I recovered off of that laptop.

16 Q. What if anything specifically -- this is a
17 document listing the name "Lamor Whitehead" with the
18 address "92 Howland Avenue, Teaneck, New Jersey"?

19 A. Yes, it is.

20 Q. Show you a two-page document that is in
21 evidence as People's 215? Do you recognize -- just
22 going back to 214, where was 214 recovered from?

23 A. That was in a folder Documents and
24 Setting/Owner/My Documents.

25 Q. Finally, I show you what is in evidence as

1 DIRECT/Det. Friberg

2 People's 215, a two-page document. Do you recognize
3 Page 1 of this two-page document?

4 A. Yes, I do.

5 Q. Do you recognize Page 2 of the document?

6 A. Yes.

7 Q. What if anything do you recognize People's
8 215 to be?

9 A. That was a PDF document that was located
10 on the owner's desktop. It would have appeared as an
11 icon right on the desktop of the computer.

12 Q. What do you mean when you say, "a PDF"?

13 A. PDF, is "Portable Document Format".
14 People refer to it as an "Adobe Acrobat" file.

15 Q. On the top of the page it listed, "L.
16 Whitehead Profit & Loss Statement, period January
17 2005 through March 2005"?

18 A. Yes.

19 Q. And on Page 2, of People's 215, it once
20 again lists a caption, "L. Whitehead", with a profit
21 & loss statement, for the period April 2005 through
22 May 2005?

23 A. Yes, it does.

24 Q. Detective, once again, was this all of the
25 documents you found on that computer?

1 DIRECT/Det. Friberg

2 A. No, it was not.

3 Q. Were there any other documents that you
4 found on the computer system, with reference to any
5 kind of poetry and music?

6 A. Yes, there were.

7 Q. And can you tell -- did you print those
8 out?

9 A. No, I did not.

10 Q. What did you do with that on the computer
11 system?

12 A. In the Owner's Profile, My Documents
13 folder, there were three documents in there that had
14 the term "La" or "L-A" as part of the name. They
15 appeared to be either poems, or music lyrics, or
16 something to that effect.

17 MR. PEARL: Your Honor, may I have
18 these marked as People's 216, 217, 218, 219,
19 220, and 221 for identification, please.

20 THE COURT: Thank you.

21 (People's Exhibits 216-223, marked
22 for identification)

23 THE COURT OFFICER: People's
24 Exhibits 216 through 223, marked for
25 identification only.

1 DIRECT/Det. Friberg

2 MR. PEARL: Thank you. May I have
3 those shown to Det. Friberg, please?

4 BY MR. PEARL:

5 Q. Detective, take a look at those documents.
6 Let us know when you've completed reviewing them?

7 Detective, do you recognize People's 216
8 through 223?

9 A. Yes, I do.

10 Q. What if anything do you recognize those
11 documents to be?

12 A. This first document is just information
13 that I recovered off of the computer hard drive that
14 I've documented. The rest of them are...

15 Q. Generally speaking, now?

16 A. Some of them are documents. Some of them,
17 just information about Internet history items.

18 Q. And in fact, are they all documents that
19 you printed, after analyzing the hard drive of that
20 laptop computer system?

21 A. Yes, they are.

22 Q. Are they the exact duplications of what
23 you viewed on the computer screen?

24 A. Yes.

25 Q. In your analysis of that laptop?

1 DIRECT/Det. Friberg

2 A. Yes.

3 Q. And they're in the same or substantially
4 the same condition?

5 A. Yes.

6 Q. How do you recognize those documents?

7 A. I placed my initials and shield number on
8 the bottom of the document.

9 Q. Each document?

10 A. Yes.

11 MR. PEARL: Your Honor, at this
12 time, People move 216 through 223 into
13 evidence.

14 THE COURT: Officer, show them to
15 Mr. Keahon, please.

16 (Handing)

17 MR. KEAHON: I have no objection,
18 judge.

19 THE COURT: Thank you. The record
20 will reflect that People's 216 through 223
21 have been admitted into evidence.

22 MR. PEARL: May I publish those
23 exhibits after they are marked in, on the
24 presenter?

25 (People's Exhibits 216-223, marked

1 DIRECT/Det. Friberg

2 for identification and received in evidence)

3 THE COURT OFFICER: People's 216

4 through 223, marked and received into

5 evidence.

6 MR. PEARL: May I publish the

7 documents, your Honor?

8 THE COURT: Yes.

9 Q. Detective, I'm showing you what is in
10 evidence as People's 223. Do you recognize People's
11 223?

12 A. Yes, I do.

13 Q. What -- can you see that over the box?

14 A. Yes.

15 Q. What if anything do you recognize People's
16 223 to be?

17 A. This is some information I recovered off
18 the hard drive of the computer that I was analyzing.
19 I recovered it from that area called "Unallocated
20 Clusters", it is data that doesn't have a pointer to
21 it anymore but I was able to search the portion of
22 the deleted data. This portion is a cookie, what is
23 called "a cookie".

24 Q. Tell the jury generally speaking what is a
25 "cookie"?

1 DIRECT/Det. Friberg

2 A. Cookies are a little bit of data that a
3 web server will hand down to the client when you view
4 a web page so the people that write the programs for
5 the web page, if they want to store some information
6 on your computer, typically to remember who you are
7 the next time you visit, it will send that
8 information down to your computer. So the next time
9 your computer visits that web page, that information
10 from the cookie goes back up to the server so they
11 can remember who you are.

12 Q. Do you know what an "IP", "Internet
13 Protocol", address is?

14 A. An IP address is an address that's
15 assigned to computers when they talk on the Internet.
16 It is like a telephone number so one computer will be
17 able to find another computer that is on the
18 Internet.

19 Q. On this server cookie that is in evidence
20 as People's 223, is there an IP address associated
21 with this cookie?

22 A. There is an IP address inside that cookie,
23 yes.

24 Q. What is the IP address?

25 A. 72.23.42.61, the information right at the

1 DIRECT/Det. Friberg

2 beginning, after the word "server cookie".

3 Q. I think you indicated that was recovered
4 off an unallocated space?

5 A. Correct.

6 MR. PEARL: I'm sorry, detective, I
7 went a little bit out of order.

8 (Pause)

9 Q. We'll go back and start at the beginning,
10 216. Do you recognize specifically now what is
11 People's 216?

12 A. Yes. It is two pieces of information that
13 I recovered off of the computer, the hard drive that
14 I was analyzing.

15 Q. Under the number one on the item, item
16 number one, do you recognize what item number one is?

17 A. Yes, that is some information that I
18 received that I recovered out of unallocated
19 clusters. That information over there denotes that a
20 visitor, a user on that computer, visited a web site.

21 Q. Can you tell the jury, can you tell them
22 using the printout, what web site they used, this
23 computer visited?

24 A. Yes, *www.ancestry.com*.

25 Q. Was there any other information contained

1 DIRECT/Det. Friberg
2 within that printout?

3 A. Yes, the full address that they visit has
4 information in there detailing whoever was going to
5 that web site. Some of the information submitted to
6 that, first name equals Lamar, last name equals
7 Whitehead, and MLLRWH -- WHITEMILLR.com.

8 Q. If somebody went to Yahoo.com to look up
9 the ancestry of Lamar Whitehead?

10 A. That information was submitted, yes.

11 Q. Item number two, what if anything do you
12 recognize item number two, on People's 216, to be?

13 A. That is just some more information that I
14 located on that computer. That particular
15 information is the details of an icon that was
16 located on the desktop, the owner's desktop.

17 Q. When you say "an icon that was located on
18 the owner's desktop", what do you mean by that?

19 A. When you start up the computer, there is
20 the desktop, the background, where those little
21 images are on your desktop. This was an icon, or
22 little image on the desktop, that you can click on.
23 If you clicked on it, it would take you to a
24 particular web site.

25 Q. In reference to this shortcut on the

1 DIRECT/Det. Friberg

2 desktop, specifically if you click on it, where would
3 the user go on this laptop computer?

4 A. It would take you to the web site that is
5 denoted there, as <http://www.dealertrack.com/credit>
6 [bureau/cbw.asp?eq=yes:www.dealertrack.com/credit](http://www.dealertrack.com/credit)
7 [bureau/cbrequest.asp?newrr=yes.](http://www.dealertrack.com/credit)

8 Q. Do you know what *dealertrack.com* is?

9 A. Yes, it is a web site for a company called
10 Dealer Track.

11 Q. When you get to that web site --

12 MR. KEAHON: I'm sorry, I didn't
13 hear the response.

14 THE COURT: You can repeat your
15 answer.

16 A. It is a web site for a company called
17 Dealer Track.

18 Q. When you go to the web site, what if
19 anything are you prompted to do?

20 A. There is -- there is several -- there is
21 just information about the company and information
22 where you can log on.

23 Q. What do you mean information to log on?

24 A. There is a link on there. When I visited
25 that, you could click on it and log onto the web

1 DIRECT/Det. Friberg

2 site. There is a user name and password type of
3 format.

4 Q. To access into the Dealer Track program,
5 you use the user name and password?

6 A. Correct.

7 Q. 217 in evidence, showing you 217 in
8 evidence. Do you recognize People's 217?

9 A. Yes, I do.

10 Q. What if anything do you specifically
11 recognize 217 to be?

12 A. That is a file that I recovered out of the
13 desktop -- Documents and Setting Owner Profile Local
14 Settings Temporary Internet Files Folder. There is
15 folders within that folder that store information
16 that your computer receives when you visit a web
17 site.

18 If you go to a web site, before you get to
19 view it on your screen, that web page will be
20 downloaded into that location, and then you can view
21 it.

22 Q. Specifically, this was a temporary
23 Internet file, to what Internet site?

24 A. Actually, the full Internet site .I don't
25 have the full Internet site. But the web page says

1 DIRECT/Det. Friberg

2 E-Loan, loan status.

3 Q. The loan status it says "Hello, Lamor
4 Whitehead"?

5 A. Correct.

6 Q. "Welcome to E-track, a secure environment
7 for you to monitor the status of your loan"?

8 A. Yes.

9 Q. Then it goes on to say, just more general
10 information?

11 A. Yes.

12 Q. Showing you what is in evidence as
13 People's 218. Do you recognize People's 218?

14 A. This is another document that I recovered
15 out of the temporary Internet files, folders. And it
16 is, it appears somebody is applying for a loan.

17 Q. What are the names under the block where
18 it says "first name" and "last name"?

19 A. "Lamor Whitehead".

20 Q. E-mail address?

21 A. Miller white white miller Yahoo.com. The
22 printout doesn't display the rest of it, but the
23 printout behind the page displays Yahoo.com.

24 Q. Where was this document recovered from?

25 A. Temporary Internet file folders.

1 DIRECT/Det. Friberg

2 Q. This appears to be for an E-Loan page?

3 A. Correct.

4 MR. KEAHON: I didn't hear the last
5 question and answer.

6 THE COURT: Would you like it read
7 back?

8 We'll have it read back, then. If
9 you would be so kind.

10 (Record read)

11 Q. Showing you what's in evidence as People's
12 219. Do you recognize People's 219?

13 A. Yes, I do.

14 Q. What if anything do you specifically
15 recognize People's 219 to be?

16 A. That was another web page file I recovered
17 out of the temporary Internet files folder.

18 Q. And it had -- some type of MBNA logo. Can
19 you tell the jury what that means?

20 A. Actually, on the way that people write web
21 pages, they'll embed pictures in the web page. When
22 the picture can't be displayed, sometimes they'll
23 stick in alternative text, so that would appear
24 there, on the original page, there was a logo there
25 for MBNA.

1 DIRECT/Det. Friberg

2 Q. Under the MBNA logo -- word, it says,
3 "Lamor Whitehead MBNA America your application
4 reference number is 056501280052."

5 THE COURT: Please continue.

6 Q. Then it says, "please record this number
7 for your future reference."

8 A. Yes.

9 Q. I'm showing you what's in evidence as 220.
10 Before I do a close-up of it, do you recognize
11 People's 220?

12 A. Yes. Yes, I do.

13 Q. What if anything do you recognize People's
14 220 to be?

15 A. That is information I located on the
16 computer. It was found in a file called Index.dat,
17 This particular Index.cat file tracks people's
18 Internet history. So when you go to a web page, it
19 can make an entry into that Index.cat file just to
20 keep track of the web surfing history.

21 Q. The dates of these files are what?

22 A. January 26th, 2005.

23 Q. For a series of times on that same date?

24 A. Yes.

25 Q. And where if anywhere was the user of this

1 DIRECT/Det. Friberg

2 laptop computer system visiting, as per this
3 document?

4 A. Https:\\www.dealertrack.com, and there is
5 some other information at the end of it, in reference
6 to Equifax.

7 Q. These file numbers at the end, do you see
8 that?

9 A. Yes.

10 Q. Generally speaking, what are these final
11 numbers?

12 A. It says, "request i.d." equals, and it is
13 a long, long number. That type of information is
14 typically an I.D. number, to refer back to a unique
15 transaction.

16 Q. Within the Dealer Track system?

17 A. Correct.

18 Q. I show you People's 221 in evidence.
19 Generally speaking, do you recognize People's 221?

20 A. Yes, I do.

21 Q. What if anything do you recognize People's
22 221 to be?

23 A. This is some data that I recovered out of
24 the unallocated clusters area of the hard drive, for
25 a file that previously has been deleted. The code

1 DIRECT/Det. Friberg
2 that it is written in, is something called HTML, that
3 is the code that is normally used to write web pages,
4 and it is some information about your loan
5 application has been submitted successfully on April
6 20th, 2000 -- it says, "We will contact you on April
7 20th, 2005 at your home number, (718)512-5286."

8 Q. But for the redacted portions, this is
9 exactly what you were able to view after you printed
10 it out from the unallocated space of the hard drive?

11 A. Correct.

12 Q. I want to show you what is in evidence as
13 66. It is a record already in evidence.

14 Read the second to last number on this
15 document, please?

16 A. I'm sorry.

17 Q. The second to last phone number on the
18 document?

19 A. (718)512-5016.

20 Q. The last number on Page 1 of 66?

21 A. (718)512-5286.

22 Q. That is the same phone number that you
23 recovered off of unallocated space, off the laptop
24 computer system you were analyzing?

25 A. Yes.

1 DIRECT/Det. Friberg

2 Q. Where it says, "We will contact you on
3 4/20/05 at your home"?

4 A. Yes.

5 Q. I think I've already showed you People's
6 223. The last document is People's 222, that is in
7 evidence.

8 Generally speaking, do you recognize
9 People's 222?

10 A. Yes.

11 Q. What specifically is People's 222?

12 A. That is another cookie that I located on
13 the laptop computer that I was analyzing.

14 Q. Is there an Internet protocol address
15 associated with this cookie?

16 A. Yes, there is one there, embedded into
17 that top i.d. number.

18 Q. Can you read the Internet protocol address
19 found on this laptop computer you were analyzing?

20 A. Sure, it's 24.191.239.112.

21 MR. PEARL: Judge, can I have this
22 final set of exhibits marked. I think we're
23 up to 224?

24 THE COURT: Correct.

25 (People's Exhibits 224-231, as

1 DIRECT/Det. Friberg

2 described, marked for identification)

3 THE COURT OFFICER: Exhibits 224
4 through 231, marked for identification only.

5 MR. PEARL: Thank you.

6 May I have the exhibits shown to
7 Det. Friberg, please.

8 (Handing)

9 Q. Please take a look at those exhibits and
10 when you're done, tell the jury if you recognize them
11 generally speaking?

12 A. Yes, I do.

13 Q. Generally speaking, what are People's 224
14 through 231?

15 A. They all related to items that I recovered
16 from, and information I recovered off of, that laptop
17 that I was analyzing.

18 Q. Are they exact printout or reproductions
19 of what you were able to view off of the laptop that
20 you were analyzing?

21 A. Yes.

22 Q. And you recognize them to be those, how?

23 A. They have my initials and shield number on
24 the bottom, all of them, portion.

25 Q. And they're in the same or substantially

1 DIRECT/Det. Friberg

2 the same conditions as when you printed them out?

3 A. Yes.

4 MR. PEARL: Your Honor, at this
5 time, the people move 224 through 231 into
6 evidence.

7 THE COURT: Show them to Mr.
8 Keahon, please.

9 MR. KEAHON: Thank you.

10 (Hanging)

11 MR. KEAHON: I have no objection on
12 any of the exhibits.

13 THE COURT: Thank you, Mr. Keahon.
14 The record will reflect that People's 224
15 through 231 will be admitted into evidence.

16 MR. PEARL: Once they are marked,
17 can I publish them to the jury.

18 THE COURT: Yes.

19 THE COURT OFFICER: People's
20 Exhibits 224 through 231, marked and received
21 into evidence.

22 (People's Exhibits 224-231, marked
23 for identification and received in evidence)

24 MR. PEARL: Thank you, officer.

25 (Hanging)

1 DIRECT/Det. Friberg

2 Q. Detective, I'm showing you what is in
3 evidence as People's 224. Specifically now, do you
4 recognize People's 224?

5 A. Yes, I do.

6 Q. Specifically what do you recognize
7 People's 224 to be?

8 A. That's another cookie that I recovered off
9 the laptop that I was analyzing.

10 Q. From where was this cookie generated?

11 A. That cookie was a cookie for E-Loan.

12 Q. And where if anywhere did you find this
13 cookie on that laptop computer system you were
14 analyzing?

15 A. The cookies are stored in the location
16 Documents And Settings Owners, documents and settings
17 owners cookies.

18 Q. What specifically is the cookie that you
19 found on that laptop computer system, if you can read
20 it into the record?

21 A. The i.d. number 70.23.

22 (Reading) 71.44.46961107209929955.

23 Q. I'd like to show you what -- People's 38
24 in evidence, an E-Loan application in the name of
25 Maria Macarle.

1 DIRECT/Det. Friberg

2 Is there a cookie associated with this
3 E-Loan application?

4 A. Yes, there is.

5 Q. And is that the same cookie that you
6 located on that laptop computer system that you
7 recovered from -- that you analyzed?

8 A. Yes, it is.

9 Q. I'd like to show you what is in evidence
10 as People's 39. This is an E-Loan application in the
11 name of Nerina Sperl.

12 Do you see a cookie associated with this
13 E-Loan application?

14 A. Yes, I do.

15 Q. Once again, I'm showing you People's 224.
16 Is that the same cookie that you found on that laptop
17 computer system you were analyzing?

18 A. Yes, it is.

19 Q. Finally, I'm showing you what is in
20 evidence as People's 45, an E-Loan application in the
21 name of Gloria Conaty. Is there an E -- is there a
22 cookie associated with this E-Loan application in the
23 name of Gloria Conaty?

24 A. Yes, it is.

25 Q. Is the cookie that I'm showing you,

1 DIRECT/Det. Friberg

2 People's 224, is the cookie that you found on that
3 laptop computer system, once again, the same cookie
4 as generated by E-Loan, on the Gloria Conaty E-Loan
5 application?

6 A. Yes, it is.

7 Q. Detective, I'm going to be showing you now
8 what is in evidence as People's 225. On this
9 document, your initials are on the top portion of the
10 letters, Page 1?

11 A. Correct.

12 Q. Do you specifically recognize what this
13 document is?

14 A. That's another E-Loan cookie located off
15 of the hard drive that I was analyzing in reference
16 to this.

17 Q. Could you please read -- this E-Loan
18 cookie was recovered from where?

19 A. Off the hard drive. It was an allocated
20 file in the cookies folder, the i.d. number
21 70.23.42.61.1955110910955892.

22 Q. Detective, could you tell the jury how a
23 cookie gets onto a computer system?

24 A. Yes, when a visitor -- when a user is
25 surfing to a web site, the web site that you go to,

1 DIRECT/Det. Friberg
2 can supply this little text file that gets downloaded
3 with the web page and it's then stored into your
4 cookies folder.

5 Q. Does the user have to do anything
6 affirmative to get that cookie to download onto their
7 computer system, or in fact, even be aware that
8 cookies are being downloaded onto their computer?

9 A. No.

10 Q. I'd like to show you what is in evidence
11 as People's 43. This is an E-Loan application,
12 dated 2/24/05, in the name of Raymond Sperl?

13 There is a cookie associated with that
14 E-Loan application, in the name of Raymond Sperl from
15 2/24/05?

16 A. Yes.

17 Q. I'm showing you People's 225. In fact, is
18 the cookie from E-Loan recovered off of the laptop
19 computer, in fact the same cookie on the E-Loan
20 application in the name of Raymond Sperl?

21 A. Yes, it is.

22 Q. I'd like to show you what is in evidence
23 as People's 44. An E-Loan application applied for on
24 2/22/05, in the name of Gerald Thurman.

25 Is there a cookie associated with this

1 DIRECT/Det. Friberg

2 E-Loan application in the name of Gerald Thurman?

3 A. Yes, there is.

4 Q. I'm showing you once again People's 225 in
5 evidence. Is the cookie you recovered off of that
6 laptop computer system, once again, the same cookie
7 as generated by E-Loan on the Gerald Thurman E-Loan
8 application?

9 A. Yes, it is.

10 Q. Detective, I'd like to show you what is in
11 evidence as People's 226. Your initials are on this
12 document?

13 A. Yes.

14 Q. Do you recognize specifically now what is
15 People's 226?

16 A. Yes, that is some information I was able
17 to recover off the laptop hard drive, just a portion
18 of what was a web page.

19 Q. Specifically, where was it recovered from?

20 A. This information was recovered in
21 something called File Slack. And File Slack is,
22 after a file is deleted and the information is in
23 unallocated clusters, they give that area to another
24 file so that new file overrides the majority of that
25 information, but there is a small portion of that

1 DIRECT/Det. Friberg

2 information that is recoverable.

3 A. Specifically now, what did you recover
4 from that laptop computer system?

5 A. Well, this was HTML code, that is the code
6 that web pages are written in, typically, and this
7 appears to be the beginning of an E-mail message from
8 Capital One Auto Finance, and their E-mail address is
9 *customerservice@capitalone.com*, to *dvdrdnr@yahoo*.

10 Q. Typically, it would have ".com"?

11 A. Typically. That is as far as -- that is
12 the only information that was left, that other
13 information was overwritten so that is why I was
14 unable to recover the ending of that E-mail address.

15 Q. This was recovered from the laptop
16 computer system, correct?

17 A. Correct.

18 Q. Showing you what is in evidence as
19 People's 228, a Capital One application in the name
20 of David Ridenour. Do you see the E-mail address
21 provided under the Capital One application?

22 A. Yes, I do.

23 Q. In fact -- can you read that E-mail
24 address into the record, please?

25 A. *Dvdrdnr@Yahoo.com*.

1 DIRECT/Det. Friberg

2 Q. I'd like to show you what is in evidence
3 as People's 227. Those are your initials, again, on
4 the document?

5 A. Yes.

6 Q. Do you recognize People's 227 that's in
7 evidence specifically?

8 A. Yes, I do.

9 Q. Can you tell the jury what it is?

10 A. This is some other information that I
11 recovered from an unallocated area of the hard drive.
12 It is actually, what I recovered is the HTML code. I
13 save it to a file and I open it up in Internet
14 Explorer. It views the way people normally would see
15 it. I was only able to recover a portion of it but
16 the information in it, that is viewable, says, "Yahoo
17 mail welcome, brendaridenour111", and that's what the
18 user would see when they successfully log onto a
19 Yahoo E-mail account.

20 Q. This is a Yahoo E-mail for
21 "brendaridenour111"?

22 A. That is a portion of a web page that
23 somebody would see when they successfully logged into
24 that E-mail account, that is not specifically an
25 E-mail, but that's the web page you get when you sign

1 DIRECT/Det. Friberg
2 into the E-mail account.

3 Q. I'd like to show you what is in evidence
4 as People's 228. Do you recognize your initials on
5 this document?

6 A. Yes, I do.

7 Q. Specifically, what is People's 228?

8 A. This is a portion of a web page that I
9 recovered out of an unallocated area of the hard
10 drive that I was analyzing. This appears to be the
11 E-mail account for *toddghassabian@Hotmail.com*.

12 Q. That was found specifically, where?

13 A. That was in an unallocated area of the
14 hard drive.

15 Q. I'd like to show you what is in evidence
16 as People's 229. Do you recognize your initials on
17 this document?

18 A. Yes.

19 Q. Specifically, what is People's 229?

20 A. This is a portion of a web page that I was
21 able to recover out of an unallocated area of the
22 hard drive, this says "Yahoo mail, welcome Nerina
23 Sperl". This is the page -- portion of the page you
24 would see when you successfully log into a Yahoo mail
25 account.

1 DIRECT/Det. Friberg

2 Q. So the Nerina Sperl Yahoo E-mail page was
3 on this laptop computer you were analyzing?

4 A. Yes, it was. I was able to recover a
5 portion of it.

6 Q. Do you know if this was Nerina Sperl's
7 laptop computer?

8 A. I don't know that.

9 Q. I'd like to show you what is in evidence
10 as People's No. 23. Loan application in the name of
11 Nerina Sperl. Was there an E-mail address provided
12 on this application?

13 A. Yes.

14 Q. Can you tell the jury -- read into the
15 record what E-mail address was provided on this
16 Capital One application in the name of Nerina Sperl?

17 A. It shows *nerinasperl@yahoo.com*.

18 Q. Detective, I'll skip to People's 231. Do
19 you recognize this two-page document?

20 A. Yes.

21 Q. Your initials are on Page 1 and Page 2,
22 both?

23 A. Yes.

24 Q. What if anything specifically do you
25 recognize People's 231 to be?

1 DIRECT/Det. Friberg

2 A. These are portions of information that I
3 recovered out of unallocated clusters. What they
4 represent are entries in a file called the index.dat
5 file, that keeps track of files that are in your
6 temporary Internet files folder. And there were
7 numerous entries to this particular -- for this
8 particular address.

9 Q. There are nine numbers that say "Full
10 Path", with the number "05214501" after it, and then
11 other language. Do you see that?

12 A. Yes.

13 Q. It goes down from Page 1, one, two, three,
14 four, five, six; Page 2, seven, eight and nine. You
15 see those?

16 A. Yes.

17 Q. What are each of those numbers, when it
18 says "full path" and there are numbers after it?

19 A. That is just information that is generated
20 by the forensic program that I utilized. It
21 indicates where this information was located on the
22 hard drive, and it needs instances, all of that
23 information that I've documented there, were
24 recovered out of unallocated clusters of the hard
25 drive, unallocated areas of the drive.

1 DIRECT/Det. Friberg

2 Q. Now, specifically, what is the information
3 provided under "full path", that information under
4 number one?

5 A. Under number one, the information that
6 it's logging there, is information in reference to a
7 websitelogin.Yahoo.com.

8 Q. And who -- where is this computer -- this
9 laptop computer system logging into?

10 A. Yahoo.com. Further down in that
11 information, you'll also see that the rest of this
12 URL, that it is trying it's -- well, it is
13 mail.yahoo.com, and login=Maria Macarle.

14 Q. Second, where it says "full path". Where
15 is this second full path attempting to log into?

16 A. That details information from Yahoo.com
17 once again. And information it is trying to get to
18 is mail.yahoo.com, login=Maria Macarle.

19 Q. Third full path, where is this third full
20 path attempting to log into?

21 A. Mail.yahoo.com and login=Maria Macarle.

22 Q. The fourth full path, where is that fourth
23 full path?

24 A. Mail.yahoo.com, login = maria macarle.

25 Q. It is at the end?

1 DIRECT/Det. Friberg

2 A. Yes.

3 Q. "M-A-R-I", and then on the last line, it
4 finishes up?

5 A. Yes.

6 Q. This fifth full path?

7 A. That is mail.yahoo.com, and login = Maria
8 Macarle.

9 Q. The sixth full path, where was this laptop
10 computer system attempting to log into?

11 A. --

12 Q. Can you see?

13 A. The login information, there, is Maria
14 Macarle also.

15 Q. The seventh full path, once again, where
16 would this laptop computer system attempt to log
17 into?

18 A. Maria Marcale, also.

19 Q. The eighth full path, where was this
20 laptop computer system attempting to log into?

21 A. That one is Maria Macarle also.

22 Q. The ninth full path, where was this laptop
23 computer system attempting to log into?

24 A. That is Maria Macarle, also.

25 Q. Showing you what is in evidence as

1 DIRECT/Det. Friberg

2 People's 27. Capital One application in the name of
3 Maria Macarle, do you see an E-mail address provided
4 on this Capital One application in the name of Maria
5 Macarle?

6 A. Yes.

7 Q. Can you put the E-mail address on the
8 record, please?

9 A. The portion that I read says,
10 "mariamacarle@yahoo.co.", I can't make out the last
11 letter.

12 Q. At Yahoo?

13 A. Yes.

14 Q. It says ".co"?

15 A. Yes.

16 Q. Finally, let me show you what is in
17 evidence as People's 230. Do you recognize your
18 initials on People's 230?

19 A. Yes, I do.

20 Q. What do you recognize People's 230 to be?

21 A. That is an entry that I recovered out of
22 File Slack.

23 Q. What is File Slack?

24 A. File Slack, it used to be information that
25 was allocated to a file that is unallocated portions,

1 DIRECT/Det. Friberg

2 and a new file is written over a part of that. Part
3 of this data. But this portion is still recoverable.

4 Q. Specifically, what is People's 230 in
5 evidence?

6 A. This is information that was in an
7 index.net file, in reference to the temporary
8 Internet files, this also was trying to get
9 information from the mail.yahoo.com and login =
10 josephswny.

11 Q. That was recovered from the laptop
12 computer system?

13 A. Yes, it was.

14 MR. PEARL: Thank you.

15 THE COURT: Can we have the lights
16 on, please?

17 MR. PEARL: Thank you, judge.

18 Detective, thank you very much.

19 Your Honor, I have no further
20 questions.

21 THE COURT: Thank you.

22 In light of the time, detective,

23 I'm going to ask you to step down. Your
24 testimony will resume at quarter after two.

25 Direct you not to discuss your testimony with

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2 anyone.

3 THE WITNESS: Yes.

4 THE COURT: Thank you.

5 (The Witness is excused)

6 THE COURT: I remind you not to form
7 or express an opinion about the case until it
8 is submitted to you for your deliberations.
9 As I've told you, do not discuss this case or
10 any matter connected to the trial amongst
11 yourselves or with anyone else. Nor may you
12 allow it to be discussed in your presence.

13 Don't read or listen to accounts
14 reported in the news media, don't visit or
15 view the place or places where the offense
16 charged was allegedly committed, or any other
17 place involved in this case, and promptly
18 report to the court by way of coming to me
19 personally, through a court officer, any
20 incident within your knowledge involving any
21 attempt to influence any member of the jury.

22 We anticipate that you will hear
23 the closing arguments of counsel today, as
24 well as be charged on the law today, as well.
25 Thank you very much.

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2 (The Jury is excused)

3 THE COURT: Is there anything else
4 to place on the record at this time.

5 MR. KEAHON: No.

6 THE COURT: Thank you, enjoy your
7 lunch. And I'll see you all at 2:15.

8 MR. KEAHON: Thank you, judge.

9 -o0o-

10

11 A F T E R N O O N S E S S I O N

12 2:00 p.m.

13 26 March 2008

14 THE CLERK: Case on trial, People
15 versus Whitehead. All parties are present
16 outside the presence of the jury.

17 THE COURT: Before Det. Friberg
18 takes the stand, for your cross-examination,
19 Mr. Keahon, Juror No. 5, Mr. Van Ostrand,
20 informed the court he has airline tickets for
21 this Friday. I don't want any jurors who are
22 deciding the case, in a precipitous fashion,
23 to feel any kind of pressure regarding their
24 ultimate determination. We have three
25 alternates left. Would you be averse to

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2 bringing in Mr. Van Ostrand right now, finding
3 out the details right now.

4 MR. KEAHON: No.

5 THE COURT: We'll bring in Mr. Van
6 Ostrand.

7 (The following occurred in the
8 presence of Juror No. 5):

9 THE COURT: All rise, please.
10 Juror entering.

11 Mr. Van Ostrand, thank you very
12 much. We didn't forget you. Please have a
13 seat.

14 Please be seated, everyone.

15 THE COURT: Now, you have been very
16 patient these past several weeks, but I
17 understand you have airline tickets for
18 Friday.

19 THE JUROR: Yes.

20 THE COURT: If I may ask, the
21 nature of the trip. I hate to ask questions.

22 THE JUROR: It is a vacation.

23 THE COURT: You had a vacation
24 planned?

25 There is no way to reschedule that.

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2 THE JUROR: We looked. It would
3 have cost money to change -- my wife already
4 took off.

5 THE COURT: Your wife has already
6 taken off time?

7 THE JUROR: Yes.

8 THE COURT: Do counsel wish to
9 speak to Mr. Van Ostrand?

10 MR. PEARL: No, thank you, your
11 Honor.

12 MR. KEAHON: Have a good trip.

13 THE COURT: Step outside for just a
14 moment, please.

15 THE JUROR: Okay.

16 THE COURT: Thank you, very much.

17 (The Juror is excused)

18 THE COURT: Based upon Mr. Van
19 Ostrand's comments, and your own statements,
20 Mr. Keahon, is there a stipulation to
21 discharge Mr. Van Ostrand with the thanks of
22 the court and substitute what is now alternate
23 one, formerly alternate two, Mr. Johnson?

24 MR. KEAHON: There is no objection.
25 We gave him the dates how long this case was

1 People v. Lamar Whitehead

2 going to be pending. We've exceeded it by a
3 little bit. I don't think we can force him to
4 lose money on a vacation, judge.

5 THE COURT: People?

6 MR. PEARL: Can I hold you off on
7 that decision until after cross-examination?

8 THE COURT: The court will be
9 obliged if you gave me your answer at this
10 time.

11 MR. PEARL: Okay. Yes, judge.

12 THE COURT: The court is consenting
13 thereto. Mr. Johnson is the new Juror No. 5.

14 We'll bring in Mr. Van Ostrand,
15 thank you.

16 Mr. Van Ostrand, words can't convey
17 the gratitude of the court and the attorneys
18 in this matter for your sacrifice in the past
19 two months, sitting as a juror in this case.
20 There is a limit to the sacrifice we can
21 expect of you. You'll be discharged with the
22 thanks of the court. I want to thank you so
23 much again.

24 The obligations that I imposed upon
25 you regarding this case with anyone are hereby

1 People v. Lamar Whitehead

2 lifted. The only prohibition is you cannot
3 discuss this case or have any contact with
4 your fellow jurors until this matter is
5 resolved. Please take with you the thanks of
6 court. Counsel wishes to thank you, as well.

7 MR. KEAHON: You were great, thank
8 you. Enjoy the trip.

9 MR. PEARL: Thank you.

10 THE COURT: Follow the officer's
11 instructions.

12 (The Juror is excused)

13 THE COURT: Are we ready to
14 continue, then.

15 MR. KEAHON: Yes.

16 THE COURT: Bring in the jury,
17 please, their presence is requested.

18 THE COURT OFFICER: Jury is
19 entering.

20 THE COURT: All rise, please.

21 (The following occurred with the
22 jury present):

23 THE CLERK: Case on trial, People
24 versus Whitehead. The jury and all parties
25 are present. Counsel waive the roll.

1 CROSS/Det. Friberg

2 THE COURT: The record will reflect
3 the substitution of Alternate Juror No. 2 for
4 Juror No. 5. Thank you very much, once again.

5 Are you ready for your
6 cross-examination?

7 MR. KEAHON: Yes, I am.

8 THE COURT: We'll recall the
9 witness.

10 THE CLERK: Det. Friberg, you're
11 reminded you're still under oath.

12 THE WITNESS: Yes.

13 (The Witness resumes the stand)

14 THE COURT: Good afternoon,
15 detective, you may resume your seat.

16 You may inquire, Mr. Keahon.

17 MR. KEAHON: Thank you, very much.

18 CROSS-EXAMINATION

19 BY MR. KEAHON:

20 Q. Good afternoon, detective?

21 A. Good afternoon.

22 Q. Detective, you and I have never discussed
23 this case, have we?

24 A. No.

25 Q. I just introduced myself to you out in the

1 CROSS/Det. Friberg

2 hallway a few minutes ago?

3 A. Yes.

4 Q. We never have talked on the phone at all
5 about this case?

6 A. No.

7 Q. Detective, you told us that you received a
8 computer, a Gateway computer. I think you told us,
9 on January 30th of 2006?

10 A. Correct.

11 Q. Do you know where that computer was prior
12 to you receiving it from Det. Gabriele?

13 A. From conversations with Det. Gabriele,
14 yes.

15 Q. And where was it?

16 A. It was removed from 92 Howland Avenue in
17 Teaneck, New Jersey.

18 Q. Do you know what date it was taken?

19 A. No, I do not.

20 Q. If I suggested to you it was taken on
21 January 27th of 2006, would that refresh your
22 recollection?

23 A. No, that wouldn't refresh my recollection.

24 Q. From the date that it was taken from that
25 address, to the date of January 30th, the date you

1 CROSS/Det. Friberg

2 received it, do you know where that computer was?

3 A. No.

4 Q. Do you know who had custody of it?

5 A. No.

6 Q. Do you know whether or not it was in the

7 Property Bureau of the Suffolk County Police

8 Department, or whether or not it was being kept by

9 Det. Gabriele?

10 A. I don't know where it was prior to it

11 being given to me.

12 Q. You indicated on January 30, 2006, you got

13 a Gateway computer, yes?

14 A. Yes.

15 Q. Did you do a report on April 21st of 2006,

16 indicating that on January 30th of 2006, Det.

17 Gabriele responded to the Computer Crimes Section

18 with a SONY laptop computer?

19 A. Yes, I did create that report.

20 Q. Did he respond to your unit with a SONY

21 laptop computer?

22 A. No, he did not.

23 Q. Did you ever change that report?

24 A. No, I did not.

25 Q. When did you first realize that you had

1 CROSS/Det. Friberg

2 made a mistake?

3 A. Probably a couple of days ago.

4 Q. And who drew that to your attention?

5 A. I had been reviewing my notes that I had
6 taken, and noticed that the error was in there.

7 Q. I'm sorry?

8 A. I noticed the error was in my report as I
9 was reviewing my note.

10 Q. The report you did was typewritten.

11 A. Correct.

12 Q. It was done on April 21st of 2006.

13 A. I don't know the exact date but if you
14 want, I can look it up.

15 MR. KEAHON: Yeah.

16 I have my notes on the back.

17 Q. If you just look at that paragraph that is
18 starred? Do you recall it was done April 21st of
19 2006?

20 A. Correct.

21 Q. You first discovered that you had
22 indicated it was a SONY laptop computer that you did
23 work on, a couple of days ago you realized, it was,
24 correct?

25 A. I didn't do work on a SONY laptop. I did

1 CROSS/Det. Friberg

2 work on a Gateway laptop, but a couple of days ago, I
3 noticed it was incorrect.

4 Q. Did the district attorney draw your
5 attention to that?

6 A. I don't believe he did.

7 Q. Did you discuss that with him?

8 A. I believe I made a comment a couple of
9 days ago.

10 Q. Detective, this computer that you
11 examined, was it password protected?

12 A. I don't know if it was or not.

13 Q. Well, what does it mean when we say a
14 computer is "password protected"?

15 A. You can be password protected in several
16 different ways. The most common way is when you
17 start the operating system, when it asks you to log
18 on. Sometimes it will request a password from you.

19 Q. So if it is not password protected, anyone
20 that has custody of that computer can turn it on and
21 put any information they want on it?

22 A. That would be a fair statement.

23 Q. As a matter of fact, a person could take
24 information from one computer, download it and upload
25 it onto another computer, can't they do that?

1 CROSS/Det. Friberg

2 A. Yes.

3 Q. How would you tell if there was -- that
4 computer was password protected?

5 A. It could be done several ways. You could
6 make -- there is information in the registry, stored
7 in the registry. That would indicate the last time a
8 password was changed. If you had started up the
9 computer and a password screen was presented to you,
10 that is another way.

11 Q. You never booted up that computer, did
12 you?

13 A. No.

14 Q. The district attorney's office never
15 requested of you to determine whether or not that
16 computer was password protected?

17 A. I don't believe they ever asked me
18 if -- to determine that, no.

19 Q. Det. Gabriele is the individual that
20 brought the computer to you?

21 A. Yes.

22 Q. Did he ever ask you if that computer was
23 password protected?

24 A. I don't recall whether he asked, or not.

25 Q. Do you recall him ever asking you to check

1 CROSS/Det. Friberg

2 to see if in fact it was password protected?

3 A. I don't recall him asking me that, or not.

4 Q. You went through a number of exhibits with
5 the assistant district attorney. Did you find
6 associated with those exhibits, a user name for the
7 person that was actually using the computer at the
8 time?

9 A. I'm not sure I understand the question.
10 There were many exhibits. I don't know which one
11 you're referring to.

12 Q. Well, if somebody goes on the computer and
13 attempts to enter a web page, or get a web page, do
14 they have to put a user name into the computer?

15 A. There are profiles that are created on the
16 computer. This particular computer had the
17 particular profile of "Owner."

18 Q. Well, if there is no password protection,
19 anyone that entered that computer would enter as an
20 owner, am I correct?

21 A. In this instance, yes.

22 Q. I'm sorry?

23 A. In this instance, yes.

24 Q. So all of the testimony you gave about
25 owner file, owner file, owner file, if this computer

1 CROSS/Det. Friberg

2 was not password protected anyone can enter, yes?

3 A. Yes.

4 Q. Anyone can seek information from it, yes?

5 A. Yes.

6 Q. And everything that you would see from the
7 computer, would indicate "owner file"?

8 A. Anything that -- anything that was still
9 currently an allocated file. The information that I
10 saw, was from the owner profile.

11 Q. So my answer is yes?

12 A. Well, the unallocated files that I
13 recovered, they weren't associated with any
14 particular profile.

15 Q. Okay. But the -- the ones that weren't
16 unallocated would always reflect owner file if there
17 was no password for the computer?

18 A. In this instance, yes.

19 Q. "In this instance, yes".

20 A. Yes.

21 Q. Okay. Now, you were given by Det.
22 Gabriele, when he -- he provided you with a list of
23 victim names, Social Security numbers, street
24 addresses, and IP addresses relating to his
25 investigation, am I correct?

1 CROSS/Det. Friberg

2 A. Yes.

3 Q. He asked you to search the computer
4 looking for something associated with that list that
5 he gave you?

6 A. Yes.

7 Q. Now, on the exhibits. That you've spoken
8 to us about, was there any user name entered into the
9 computer, to get those exhibits? Onto the computer?

10 A. I don't think I understand that, the way
11 the question is worded.

12 Q. I probably did it inartfully because I'm
13 not that familiar with computers, but let me try it
14 again.

15 There were a number of exhibits that have
16 been displayed for the jurors?

17 A. Yes.

18 Q. You know from the list that you were
19 given, from Det. Gabriele, the names that he was
20 looking for?

21 A. Yes.

22 Q. We know the names that you found and the
23 exhibits they were on, and they have been displayed
24 for this jury?

25 A. Yes.

1 CROSS/Det. Friberg

2 Q. Is there any indication of a user name
3 connected to any of those victim exhibits that are in
4 evidence?

5 A. No, most of them were from the owner
6 profile.

7 Q. Which we know, again, would be anyone
8 using the computer?

9 A. Correct.

10 Q. Did you review all of the deleted material
11 on the hard drive?

12 A. Not all of the deleted material.

13 Q. I also thought you can't delete anything
14 from the hard drive.

15 A. For a period of time, it is there. It is
16 overwritten when the hard drive needs other
17 additional storage space.

18 Q. Were there some documents that you made
19 more readable in form?

20 A. Yes.

21 Q. And were they any of the exhibits that
22 we've seen in evidence?

23 A. Yes.

24 Q. So, there are items that were on the
25 computer, that you found on the hard drive, that you

1 CROSS/Det. Friberg

2 made more readable in form?

3 A. Yes.

4 Q. The district attorney had asked you on his
5 direction examination, if each of those items that
6 are in evidence, are exactly as they appeared on the
7 hard drive.

8 A. --

9 Q. I think you answered yes.

10 A. Yes.

11 Q. Was that incorrect?

12 A. Technically, it was incorrect.

13 Q. Did you ever run simulations of the hard
14 drive as if you were running it as an operator as
15 opposed to an analysis?

16 A. No.

17 Q. These cookies that you talked about. Was
18 there any person logging information on those
19 cookies?

20 A. That I could identify, no.

21 Q. The cookies that you spoke about on direct
22 examination, and the jurors had a chance to see, you
23 looked to see if there is any persons logging
24 information contained within the cookie and you
25 didn't find any?

1 CROSS/Det. Friberg

2 A. That I was aware of, no.

3 Q. Is there a registration -- of who
4 registered the operating system of this computer?

5 A. There is that information, yes.

6 Q. Do you have the name of the person that
7 registered this computer?

8 A. That computer is registered automatically
9 when it was -- when it was created by the
10 manufacturer. So it has default registration
11 information on it. It doesn't have a person's name.

12 Q. Could you take me through that one more
13 time?

14 A. Sure. When some computer manufacturers,
15 when they manufacture the computer, they set it up so
16 that the end user doesn't have to go through the
17 registration process online and put in information.
18 When that's done, the information that is stored in
19 the registration area for that, is information that
20 the manufacturers put in when they manufacture the
21 laptop. So it is not a particular person's name or a
22 business name. It is standard information that the
23 manufacturer puts in there.

24 Q. So there is no name associated with that
25 computer?

1 CROSS/Det. Friberg

2 A. Correct.

3 Q. People's 212 is a bunch of pictures with a
4 guy that doesn't dance well, right?

5 A. I don't see him dancing, though, so.

6 MR. PEARL: Objection.

7 THE COURT: Sustained.

8 Q. This is one of the pictures that you found
9 on the computer?

10 A. Two of them, yes.

11 Q. Did it appear like it was a birthday
12 party, all of these pictures?

13 A. Yes.

14 Q. With balloons?

15 A. I believe some of the pictures I observed
16 had balloons in them.

17 Q. Did it appear the birthday party was for a
18 gal about 91 years of age?

19 A. It appeared that it was a birthday party
20 for two people.

21 Q. How old?

22 A. One was 90 years of age, and one, I
23 believe, was the defendant.

24 Q. Did it indicate that the 90 year old that
25 was celebrating her birthday with my client, was his

1 CROSS/Det. Friberg

2 grandmother?

3 A. Yes, it did appear so.

4 Q. It kind of looked like he was MCing the
5 party, didn't it?

6 A. And he was also one of the celebrants.

7 Q. Dancing, yeah. And these had a date on
8 the computer of May 2nd of 2005?

9 A. Yes.

10 Q. We talked about People's 213. Do you
11 recall that?

12 A. Yes.

13 Q. That has a fax sheet with a date of
14 9/1/05?

15 A. I believe that is what is written in the
16 date.

17 Q. How did that fax sheet get on the
18 computer?

19 A. I don't know.

20 Q. Then the two documents below it -- and
21 that one, which are part of the same exhibit, have a
22 date of December 1st of 2005, right?

23 A. I believe so.

24 Q. 213 -- that was 213, I'm sorry? The next
25 document is 214. People's 214.

1 CROSS/Det. Friberg

2 A. Yes.

3 Q. Do you recall that?

4 A. Yes.

5 Q. I didn't blow it up for you to see, but
6 you recall that?

7 A. Yes.

8 Q. What date was this put on the computer?

9 A. I believe that was -- I believe that was
10 September of 2005. I can check my notes if you would
11 like the exact date.

12 THE COURT: Sure, if you would.

13 MR. KEAHON: And I have no
14 objection if you keep your notes out. Any
15 time you need to do it, just check.

16 THE WITNESS: Sure.

17 A. The computer reported the date of that
18 being created on the computer, September 26th of
19 2005.

20 Q. September of 2005?

21 A. Yes.

22 Q. The next exhibit is People's 215. It is a
23 two-page exhibit. Do you recall this, sir?

24 A. Yes.

25 Q. What was the date that was created on?

1 CROSS/Det. Friberg

2 A. That was September 27th of 2005.

3 Q. September 27th of 2005.

4 A. Correct.

5 Q. Were you told that the indictment covered
6 the dates of September 2004 to March of 2005?

7 A. No, I didn't. I wasn't aware of the
8 dates.

9 Q. My next exhibit is 216. Do you recall
10 telling us about this one?

11 A. Yes.

12 Q. 216 -- what did you say this was?

13 A. The top item was an entry that I recovered
14 out of unallocated clusters, that was previously in
15 an index.dat file that showed a visit to the
16 Ancestry.com web site, and the bottom one is a
17 representation of the icon on the desk top. To
18 Dealer Track.

19 Q. Okay. Let's talk about the top one. What
20 date was that one?

21 A. If you can zoom that in for me.

22 Q. Sure?

23 A. The date of that visit was, I believe, is
24 November of 2005 -- a little bit to the left, please.
25 11/29/05.

1 CROSS/Det. Friberg

2 Q. 11/29 of 2005?

3 A. Yes.

4 Q. The second part of it you told us was,
5 what, I apologize?

6 A. That is an Internet shortcut that was
7 sitting on the desktop, a shortcut to the Dealer
8 Track web site.

9 Q. Okay. I think you told us that you
10 actually went on the Dealer Track web site?

11 A. I have, yes.

12 Q. And it doesn't permit you to find out
13 anybody's credit reports, does it?

14 A. I didn't actually log into the Dealer
15 Track web site. I don't have a user name or password
16 for the web site, to use.

17 Q. Well, from the information that is on that
18 document, what were you able to enter?

19 A. That is just, like, the main page where
20 you can log onto the Dealer Track web site as to a
21 log-on area for you.

22 Q. What does it tell you on the web page?

23 A. I don't recall everything that was on the
24 web page. I saw it was Dealer Track's web site.

25 Q. It doesn't give you anybody's personal

1 CROSS/Det. Friberg

2 informationn on that page?

3 A. No.

4 Q. 217. You recall this?

5 A. Yes.

6 Q. And that is an E-Loan? Right?

7 A. Yes.

8 Q. It says "Hello Lamar Whitehead, welcome to
9 E-Track." It's to monitor the status of your loan,
10 right?

11 A. Correct.

12 Q. His loan, right?

13 A. Yes.

14 Q. No one else's loan?

15 A. I don't know who applied for it, but that
16 is whose name it's in.

17 Q. Is there anything in that document that
18 indicates that it was anything other than his loan?

19 A. No.

20 Q. What's the date of that?

21 A. Let me look for that. That is December
22 16th of 2005.

23 Q. December 16th of 2005. The next one is
24 218? What's this.

25 A. That is an E-Loan application.

1 CROSS/Det. Friberg

2 Q. For who?

3 A. Lamar Whitehead.

4 Q. I think you said it had an E-mail address?

5 A. Yes.

6 Q. What was the E-mail address?

7 A. "Mllrwhitewhitemllr", the code behind that
8 page says "Yahoo.com". The E-mail address
9 "milrwhitewhitemllr".

10 A. I believe it is to "mllrwhitewhitemllr".

11 Q. There is no "I", there is two "Ls"?

12 A. I believe so.

13 Q. Okay. What is this again?

14 A. That appears to be an E-Loan application
15 web page.

16 Q. For who?

17 A. "Lamor Whitehead".

18 Q. Is there anything in this document that
19 indicates it is for anybody other than himself?

20 A. No.

21 Q. What is the date of this?

22 A. That is 12/16 of 2005.

23 Q. 12/16 of 2005?

24 A. Correct.

25 Q. I show you People's 219. What do we have

1 CROSS/Det. Friberg

2 here?

3 A. That looks like the MBNA application for
4 "LAMOR WHITEHEAD."

5 Q. What is the date of that?

6 A. That is 12/16/05, also.

7 Q. 12/16/05?

8 A. Yes.

9 Q. This next document is 220. What is that,
10 sir?

11 A. Those are entries from the index.dat file
12 showing visits to the Dealer Track web site on
13 January 26th of 2005.

14 Q. Does it indicate who the user is on this
15 document?

16 A. Not that I can tell, no.

17 Q. 221, People's 221, what is this?

18 A. That was an application, a web page that
19 was recovered from an unallocated cluster in
20 reference to a loan application. The code behind
21 that web page says it was for Capital One Auto
22 Finance.

23 Q. What is the date?

24 A. The date that it says in the code, is
25 April 20th of 2005.

1 CROSS/Det. Friberg

2 Q. April 20th?

3 A. Yes.

4 Q. Who was the user of the computer on this
5 document?

6 A. I don't know.

7 Q. I'm sorry?

8 A. I don't know.

9 Q. People's 222, do you recall what that was,
10 sir?

11 A. Yes, that was a cookie that was recovered
12 off of that computer.

13 Q. We talked about the cookie not having any
14 person or individual's log-in information on it,
15 right?

16 A. Not that I was able to tell, no.

17 Q. Who was on the computer when this document
18 was created?

19 A. I don't know.

20 Q. I'm sorry?

21 A. I don't know.

22 Q. Can you see that, sir?

23 A. Yes.

24 Q. This is People's 223. What is this, sir?

25 A. That is a cookie I recovered from the

1 CROSS/Det. Friberg

2 unallocated area of the computer.

3 Q. And the date on this?

4 A. There is no date attached to unallocated
5 data.

6 Q. No date?

7 A. Correct.

8 Q. Who was the user when this document was
9 created?

10 A. I can't tell.

11 Q. Going back to the last document, 222.
12 When was this document created?

13 A. That took, if you could move it to the top
14 left, so I can identify it a little bit better.

15 Q. Sorry. Should I hand it up to you?

16 A. No, that's fine. The date that cookie was
17 created on that computer, was January 3rd of 2005.

18 Q. And the user on that?

19 A. I can't tell.

20 Q. Exhibit 224. That was a cookie created on
21 February 16th of 2005?

22 Q. And the user?

23 A. I can't determine the user.

24 Q. 225? I'm sorry. 225, sir?

25 A. That was a cookie created on December 16th

1 CROSS/Det. Friberg

2 of 2005.

3 Q. December?

4 A. Correct.

5 Q. 16th of 2005?

6 A. Yes.

7 Q. Who was the user to create this?

8 A. I can't tell who the user was that created
9 that.

10 Q. 226.

11 A. That is information that came out of the
12 unallocated area of the hard drive.

13 Q. When was that created?

14 A. There is no dates attached to unallocated
15 data.

16 That is File Slack. Likewise there is no
17 dates attached to that.

18 Q. Who was the user to create this?

19 A. I can't tell.

20 Q. Do you recognize this, sir?

21 A. Yes, that was from an unallocated area of
22 the hard drive.

23 Q. When was it created?

24 A. There is no dates attached with
25 unallocated areas.

1 CROSS/Det. Friberg

2 Q. Who was the user?

3 A. I don't know.

4 Q. 228?

5 A. That was information that came out of the
6 unallocated area.

7 Q. The date it was created?

8 A. I may be able to tell by looking at the
9 entire page. If you want me to take a look.

10 MR. KEAHON: Sure, why don't I hand
11 it up to you.

12 THE COURT: Officer, if you would
13 assist counsel, please.

14 MR. KEAHON: Thanks very much.

15 (Handing)

16 A. This doesn't have a date on it, either.

17 Q. I'm sorry?

18 A. It has no date on it.

19 Q. And who was the user when this is created?

20 A. I don't know.

21 Q. 229?

22 A. That is information from the unallocated
23 area with no dates, no user that I could determine.

24 Q. No date, no user?

25 A. Correct.

1 CROSS/Det. Friberg

2 Q. 230. What is that?

3 A. If you can move it over to the left so I
4 can catch the beginning of that.

5 Q. Sure.

6 Q. That was some data that I recovered from
7 File Slack, which was an entry in an index.dat file
8 that just displays somebody attempting to log into
9 mail.yahoo.com with the log-in josephswny?

10 Q. And what date?

11 A. I was unable to determine a date.

12 Q. Who was the user?

13 A. I don't know.

14 Q. I'm sorry?

15 A. I don't know.

16 Q. What prevented them from logging in?

17 A. I don't know what prevented them from
18 logging in, or not. Just from that information, I
19 can see there was an attempt. I don't know whether
20 it was successful, or not.

21 Q. Was there anything else on the computer to
22 go with this, sir, to assist you in making a
23 determination if they were successful or not
24 successful?

25 A. There was nothing else I could find.

1 CROSS/Det. Friberg

2 Q. That was it?

3 A. On josephswny, yes.

4 Q. And no date?

5 A. Correct.

6 Q. And no user?

7 A. Correct.

8 Q. 231, this was the one where we had Full
9 Path, and it is like 1, 2, 3, 4?

10 A. I believe there are nine there all
11 together, yes.

12 Q. What date was this created, sir?

13 A. What date did I create that document?

14 Q. No, what date was it created on the
15 computer?

16 A. I was not able to determine that.

17 Q. Who was the user?

18 A. I was not able to determine that.

19 MR. KEAHON: Could we have the
20 lights back on.

21 THE COURT: Thank you, officer.
22 Thank you very much, detective. I appreciate
23 you coming in.

24 THE WITNESS: Thank you.

25 MR. KEAHON: Oh excuse me, make

1 CROSS/Det. Friberg

2 sure. I apologize.

3 (Pause)

4 MR. KEAHON: That's it. Thanks.

5 THE COURT: Thank you, Mr. Keahon.

6 Any redirect.

7 MR. PEARL: Just briefly, thank

8 you.

9 REDIRECT EXAMINATION

10 BY MR. PEARL:

11 Q. Detective, Mr. Keahon asked you a question
12 about you made documents more readable. Do you
13 remember that question?

14 A. Yes.

15 Q. What do you mean you made a document more
16 readable?

17 A. I just printed it in a format that is
18 commonly displayed when a viewer of the document
19 actually sees the document. The way data is stored
20 on a hard drive is just zeroes and ones. That is not
21 very readable, and that is not the way the end user
22 observes it. I recovered the HTML code, the code
23 that creates that page the way that the user normally
24 sees it. That is not that readable by the normal
25 user. I saved the code, gave it an HTML extension,

1 CROSS/Det. Friberg
2 and I viewed it in Internet Explorer, and then I
3 printed that version. It is essentially the same
4 information that the user would see.

5 Q. Technically, you actually were correct,
6 correct?

7 A. Correct.

8 MR. PEARL: Would you like it read
9 back?

10 MR. KEAHON: Could we have the last
11 question and answer read back, please?

12 THE COURT: Ms. Maue, if you would
13 be so kind.

14 (Record read)

15 MR. KEAHON: I didn't hear it.

16 Again, I'm sorry.

17 (Record read)

18 MR. KEAHON: I object. Ask it be
19 stricken.

20 THE COURT: Sustained. Leading.
21 The jury is to disregard the last remarks of
22 the prosecutor and the witness.

23 You may continue, Mr. Pearl.

24 BY MR. PEARL:

25 Q. Detective, with reference to People's 222,

1 CROSS/Det. Friberg

2 it was a cookie, beginning with 24?

3 A. Okay.

4 Q. Without putting the lights off and putting
5 it on the presenter, are you aware of what Nigel
6 DeFreitas' IP address is?

7 A. I'd have to refresh my memory.

8 Q. Is there something that would refresh your
9 recollection?

10 A. There is, but I don't know if I have it
11 with me.

12 Q. Okay. I'll move onto the next question.

13 In reference to People's 223, there was an
14 IP address 70.2343.261. Do you know what Michael
15 Redman's IP address is?

16 A. Not without looking at some other
17 documentation.

18 Q. Detective, I'll move on to People's 224
19 and 225. These are the E-Loan cookies, one of them
20 ending in the number 926, and the other one ending in
21 the number 955?

22 A. Yes.

23 Q. You'll recall I asked you questions
24 referring to other documents in evidence, Capital One
25 and E-Loan?

1 CROSS/Det. Friberg

2 A. Yes.

3 Q. And the same cookies were on both of those
4 documents?

5 A. Yes.

6 Q. What if anything is the significance of
7 cookies found on the defendant's laptop as well as
8 the same cookie appearing on the various?

9 MR. KEAHON: Could I be heard,
10 please.

11 THE COURT: Thank you, I'll see
12 counsel at side bar.

13 (The following occurred at side
14 bar)?

15 THE COURT: Again, with the
16 significance. Don't ask the witness to
17 testify to that.

18 And I think we're -- you have the
19 witness on the stand for an hour and a half so
20 I think we're reemphasizing direct.

21 MR. PEARL: It was Mr. Keahon asked
22 a few questions.

23 THE COURT: Right. But redirect is
24 not to reemphasize direct. It is to come to
25 new areas. It is not to reemphasize the

1 CROSS/Det. Friberg

2 points you feel were damaged on
3 cross-examination. It is to cover new areas
4 on redirect, that were not covered on direct,
5 that the cross-examiner created a false
6 impression, or opened up a door to a new area.

7 MR. PEARL: That's what I thought I
8 was doing.

9 THE COURT: When I said "briefly",
10 we're beyond the "briefly" now.

11 MR. PEARL: That is a huge meaning.

12 MR. KEAHON: The other thing, I ask
13 that the question and answer be stricken. He
14 posed it as the defendant's computer.

15 THE COURT: The witness never
16 answered it so.

17 MR. KEAHON: Strike the question
18 then.

19 THE COURT: I'll strike the
20 question, sustain the question as to form.

21 MR. PEARL: Can I ask the question
22 again, based on your expertise in computer
23 forensics, do you have an opinion as to the
24 cookie appearing on the laptop computer and on
25 various loan applications? If you want me to

1 CROSS/Det. Friberg

2 pull the loan applications, I'll pull the loan
3 applications.

4 MR. KEAHON: I'll object.

5 THE COURT: What is the anticipated
6 answer?

7 MR. PEARL: That the computer was
8 involved in making that loan transaction.

9 THE COURT: It goes to the ultimate
10 question. So keep away from that, sustain
11 the objection.

12 MR. KEAHON: Strike the question.

13 THE COURT: Yes.

14 (The following occurred in open
15 court):

16 THE COURT: The jury will disregard
17 the last comment of the prosecutor. Thank
18 you. You may continue, Mr. Pearl.

19 MR. PEARL: Thank you. I have no
20 further questions.

21 THE COURT: Thank you. Any recross
22 within the limited parameters of the redirect.

23 MR. KEAHON: No, thank you.

24 THE COURT: Thank you very much,
25 detective, you may stand down.

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2 THE COURT: Thank you.

3 (Pause)

4 THE COURT: Thank you.

5 Ms. Franzese, Mr. Pearl?

6 MR. PEARL: Thank you, your Honor,
7 the people rest.

8 THE COURT: At this point in time,
9 ladies and gentlemen of the jury, it is
10 necessary for the court to consult with
11 counsel before we proceed. Remember my
12 admonitions.

13 I remind you not to form or express
14 an opinion about the case until submitted to
15 you for deliberations. As I've told you, do
16 not discuss this case or any matter connected
17 to the trial amongst yourselves or with anyone
18 else. Nor may you allow it to be discussed in
19 your presence.

20 Don't read or listen to accounts
21 reported in the news media, don't visit or
22 view the place or places where the offense
23 charged was allegedly committed or any other
24 place involved in this case, and promptly
25 report to the court by way of coming to me

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2 personally, through a court officer, any
3 incident within your knowledge involving any
4 attempt to influence any member of the jury.

5 (The Jury is excused)

6 THE COURT: The people having
7 rested.

8 Mr. Keahon?

9 MR. KEAHON: Yes, judge. I have a
10 motion to make, that is to dismiss the charges
11 again my client for failure to establish my
12 client's guilt in a prime facie case.

13 THE COURT: Thank you.

14 People?

15 MR. PEARL: Your Honor, Mr. Keahon,
16 the people argue the evidence is overwhelming,
17 and we established each and every element in
18 the light most favorable to the people, which
19 the court is required to view the evidence at
20 this time, and we clearly established all the
21 elements of the crime to the satisfaction.

22 THE COURT: Thank you.

23 I take it you also are moving to
24 dismiss on the failure to prove the
25 defendant's guilt beyond a reasonable doubt,

1 People v. Lamar Whitehead

2 as well?

3 MR. KEAHON: Yes.

4 THE COURT: Considering the
5 evidence adduced at trial in the light most
6 favorable to the non-movant, as the court is
7 obliged to do, I find that the people have
8 established each and every element of the
9 crimes alleged in the Indictment before the
10 court, both on a prime facie basis, and proof
11 beyond a reasonable doubt standards, for the
12 purpose of this motion.

13 Your applications will be denied
14 and your exception will be noted for the
15 record, Mr. Keahon.

16 MR. KEAHON: Thank you, judge.

17 THE COURT: Thank you. Do you wish
18 a brief recess before we proceed?

19 MR. KEAHON: Yes, judge, I do need
20 that.

21 THE COURT: Consult, then, with Mr.
22 Whitehead. The court will take a brief
23 recess. Keep it short as possible.

24 (Brief recess)

25 THE CLERK: Case on trial, People

1 People v. Lamar Whitehead

2 versus Whitehead. All parties are present
3 outside the presence of the jury.

4 THE COURT: Thank you.

5 Can we have the door closed for
6 just a moment, please?

7 THE COURT OFFICER: Yes, sir.

8 THE COURT: Thank you.

9 Outside of the presence of the
10 jury, the court having ruled on defense
11 counsel's motions after the people had rested,
12 Mr. Keahon, the court may ask what are your
13 expectations at this juncture?

14 MR. KEAHON: To rest.

15 THE COURT: Are you ready with your
16 closing?

17 MR. KEAHON: I am, your Honor.

18 THE COURT: Are the people ready
19 with their closing?

20 MR. PEARL: I am. I ask for a few
21 minutes' break so I can pull exhibits
22 beforehand.

23 THE COURT: After Mr. Keahon's
24 closing, we'll have a brief recess. Because
25 of the expected length of time, the jury will

1 People v. Lamar Whitehead

2 be informed to come back after your closing,
3 at 9:00 o'clock tomorrow morning.

4 My compliments to the jury.

5 THE COURT OFFICER: Jury is
6 entering.

7 THE COURT: All rise, please.

8 (The following occurred with the
9 jury present):

10 THE COURT: Thank you. Please be
11 seated.

12 THE CLERK: Case on trial, People
13 versus Whitehead. All parties are present,
14 including the jury.

15 THE COURT: The people have rested.
16 Mr. Keahon?

17 MR. KEAHON: We rest.

18 THE COURT: Thank you.

19 Ladies and gentlemen of the jury,
20 the reason you don't have your notebooks is
21 because the attorneys are about to make
22 closing arguments to you. As I instruct you
23 on the law, what the attorneys say is not
24 evidence. That is why you do not have your
25 notebooks. After the conclusion of the

1 CLOSING/Mr. Keahon

2 closing summations, we'll take note of the
3 time. You'll either be charged on the law at
4 the time, or if it is late, I'll discharge you
5 for the day and ask you to come back at 9:00
6 o'clock tomorrow morning, at which time you'll
7 be charged on the law and commence your
8 deliberations.

9 Mr. Keahon, do you wish to address
10 the jury?

11 MR. KEAHON: I do so.

12 THE COURT: You may do so at this
13 time.

14 MR. KEAHON: I speak first. So I
15 think I can speak for everybody in this
16 courtroom, we apologize for the delays. We
17 thank you so much for your service. I think
18 you all realize that this system of justice
19 does not work without people such as
20 yourselves, who are willing to put up with
21 what you put up with. We've tried to do the
22 best that we can do, all of us. The court has
23 had a long calendar every morning.
24 Emergencies happen. But I think you've seen
25 all the parties involved, here, ready to go as

1 CLOSING/Mr. Keahon

2 soon as we could. And I speak for everybody,
3 I just want to thank you very much for your
4 efforts in this case.

5 Seven weeks, that is a long time
6 defending someone on these serious charges,
7 with these serious consequences. It keeps you
8 up very late at night and it gets you up early
9 in the morning. I know they're as tired as I
10 am.

11 You come into this courtroom, and
12 never having sat in judgment of another
13 individual that has been charged with a crime,
14 and I know that you expect that justice will
15 be done. Each of us, have had a friend, a
16 member of the family, that have been accused
17 of a crime. And when that happens, their
18 rights under which we work, an accused's
19 rights, become so important to each of us
20 individually. Because when it happens to you,
21 a member of your family or close friend, you
22 demand fairness in the case. You demand
23 fairness from the judge, from the prosecutors,
24 and most of all, from the jury.

25 Those rights that I speak to you

1 CLOSING/Mr. Keahon

2 about, are the presumption of innocence, the
3 burden of proof, and the fact that if the
4 accused does not take the witness stand, you
5 cannot consider that in any way in reaching
6 your verdict. By your oath as jurors, you
7 have promised to embrace those rights, and to
8 apply them. Those rights are your rights, as
9 they are Lamar Whitehead's rights. The
10 presumption of innocence, the judge will tell
11 you, is present right now, has been present
12 every day in this courtroom, and will continue
13 to be applied by you, even during your
14 deliberations. The presumption of innocence.

15 We're unlike most countries in the
16 world. We presume someone innocent. We don't
17 presume them guilty.

18 The burden of proof is at this
19 table right here. The accusation has been
20 made. A plea of not guilty has been made. So
21 the burden of proof never shifts over to this
22 table. My client has not testified. By your
23 oath as jurors, you have promised that you
24 will not let that enter in any fashion into
25 your deliberations. It is not the judge in

1 CLOSING/Mr. Keahon

2 this case that will reach a verdict. It is
3 not Det. Gabriele that will reach a verdict in
4 this case. It is not the prosecutors, and it
5 certainly is not me. It is twelve of you.
6 From many different backgrounds, with very
7 different life experiences, people who
8 individually and collectively, bring so much
9 to this process that you really don't get
10 tricked. You don't get fooled. One person
11 sitting as a factfinder, maybe. But twelve of
12 you, with everything that you've experienced
13 in your lives? The things that you've dealt
14 with, the people that you have spoken with and
15 the people that have tried to persuade you to
16 do certain things. When you bring that into
17 this courtroom, that is all you need.

18 I spoke to you in the beginning of
19 this case, that all you really need is your
20 common sense, your logic, and your past
21 experiences in life. You do it every day.
22 You, sir. Sir. Ma'am. Each of you. And
23 that is what will help you reach the right
24 decision in this case.

25 What you want to see I'm sure, is

1 CLOSING/Mr. Keahon

2 credible evidence. Believable evidence that
3 you can accept, that will help you make a
4 decision in this case. I think and I hope
5 that you found during the course of this case,
6 that people really -- that have testified at
7 this trial, really haven't been honest with
8 you.

9 They haven't taken that oath
10 seriously. There have been witnesses that
11 have taken that witness stand -- I hope you
12 find -- that have intentionally lied
13 notwithstanding that oath. I wish I would
14 have said it to you in the beginning of this
15 case when you had the note box. Just jot a
16 little note down on each witness on how you
17 felt about what they were saying and how they
18 were saying it. Because I think that we all
19 probably have a mechanism within ourselves,
20 whether it is in our heart, our stomach, our
21 brain, I don't know, but something triggers
22 within ourselves, letting us know that whoever
23 is speaking to us, is lying to us, is
24 mistaken, was trying to fool us. And ask
25 yourselves, did you have that feeling when

1 CLOSING/Mr. Keahon

2 Valerie Rodriguez testified? Honestly. You
3 can take back the things, she testified the
4 things she said. Ask yourself the same
5 question about Nigel DeFreitas, the questions
6 you had in your mind and what you were
7 thinking when he was testifying. The same for
8 Anita Bryant. These are their witnesses.
9 They put them forward as truthful, accurate,
10 and honest individuals. And I think it is
11 fair to say that when you heard their
12 testimony -- when you heard their testimony,
13 I'm hoping that many of you felt they were not
14 being honest with you. They were not
15 respecting that oath.

16 Those are decisions you have to
17 make. And the judge is going to talk to you
18 about reasonable doubt. If you have a
19 reasonable doubt, you cannot convict. Well,
20 what is reasonable doubt? I think you find it
21 is basically what those words say. It is a
22 doubt based upon reason: When you say to
23 yourself, I am not convinced that Valerie
24 Rodriguez told us the the truth. I'm not. I
25 had a reasonable doubt as to her testimony.

1 CLOSING/Mr. Keahon

2 Reasonable doubt, I think you'll find, is a
3 doubt you can attach a reason to and actually
4 talk to your fellow jurors about it. And they
5 say, well, why is it you don't want to
6 convict? And you say, well, I have some
7 reasonable doubts and this is what they are.
8 Throughout this case, is there any one of you
9 that can say, I didn't have a gut feeling,
10 that this case wasn't being done right? That
11 it wasn't really being fair? The things that
12 you saw happening in this courtroom? Would
13 you want it to be your kid, if he was sitting
14 next to me, or your nephew, or your sister?
15 Or any close friend of yours, the things that
16 we saw happening in this courtroom? You knew
17 it wasn't right. You know it wasn't the way
18 it was supposed to be. You think about that.
19 Because once again, we talk about rights and
20 what we do.

21 The only way it works, is if you
22 treat this young man at my table, as you would
23 someone very close to you on trial. And then
24 you demand that it be done the right way, and
25 there is nothing wrong with that. You owe me

1 CLOSING/Mr. Keahon

2 nothing. You owe them nothing. The only
3 thing any of you owe, by this jury service, is
4 to be fair, to not favor one side or the
5 other, and call it as you see it. And at the
6 end of this case, no matter what your verdict,
7 no one can ask you or demand of you why you
8 voted a certain way. Your verdict is your
9 verdict. You don't have to stand up and give
10 me an answer as to why your verdict was what
11 it was, and certainly not to the district
12 attorney's office nor to the judge.

13 It's what you felt. And that's why
14 we have twelve of you, and alternates, sitting
15 on a jury. Because you owe nothing to us.
16 There is no allegiance to me or to the
17 prosecution. If they put on a case such as
18 they have, with the things that you've seen
19 and heard, you have every right to say, you
20 know what? I reject it. You have that power.
21 Then maybe the next time, they do it the right
22 way. That's the only way that makes them do
23 it the right way. But they count on you
24 accepting it.

25 Like the fellow that did the

1 CLOSING/Mr. Keahon

2 handwriting. His answer was, I never make a
3 mistake, and I'm right. Can you -- any one of
4 you ever say that? A good percentage of the
5 time, a lot of us are wrong.

6 Det. Gabriele, is there any
7 question in any of your minds, that when he
8 started this investigation, it was his belief
9 that that young man was guilty? And he went
10 down a path to establish and prove it. Never
11 wavering. But you know what? Det. Gabriele
12 is not the judge. And he is not the jury.
13 And you have every right to look at the manner
14 in which each witness conducted themselves.
15 The impact they made on you, their body
16 language, their facial expressions. Their
17 personality. All of those things tell you, or
18 give us an idea, can I trust this person?

19 We heard, in addition to Mr.
20 DeFreitas and Ms. Bryant, Anita Bryant, Ms.
21 Valerie Rodriguez. We heard from Ms. Georgia
22 Fortune. They had all the documents, all the
23 records, from the last two years. When did
24 they make a determination that it is necessary
25 to call the young lady? Two weeks ago.

1 CLOSING/Mr. Keahon

2 Almost finished the trial.

3 MR. PEARL: Judge, objection.

4 THE COURT: Overruled.

5 MR. KEAHON: To call the young lady
6 two weeks ago, Det. Gabriele. Serves her with
7 a subpoena. A week ago Friday. She comes in
8 to see him the following Monday and they say
9 to her, take a look at these documents. We
10 want you to identify his handwriting. You
11 remember her testimony. She dated him for a
12 year. They went out. She saw his
13 handwriting. I said, well, where did he live?
14 Where did he go to school? What are his
15 family members' names? I don't know, I don't
16 know, I don't know. Did you go out to dinner
17 with him? Yes, a couple of times. Did he go
18 to your house, yes, a couple of times. Did he
19 ever send you cards? Well, yes. He sent me a
20 holiday card and a birthday card. I said, you
21 told us you started dating him in
22 November -- at the end of 2002 to the end of
23 2003. When is your birthday? She said my
24 birthday's in November. I said, did he send
25 you a birthday card in November? I don't

1 CLOSING/Mr. Keahon

2 remember. Did he send you a Christmas card in
3 2002? I don't remember. Did he send you a
4 birthday card at the end of next year when you
5 broke up? I'm not sure. He certainly didn't
6 send you a Christmas card because you broke
7 up. Yes, we broke up. I said it was the
8 pre-printed card? Yes.

9 This is the person they bring in.
10 Within two weeks of the end of this case, to
11 identify handwriting on documents they have
12 had for two years. These are the things that
13 create reasonable doubts. Things that you can
14 say when you're back there, you know, this is
15 silly. What they are doing, and what they
16 did. They're counting on you. And I have to
17 say this: They are known as assistant
18 district attorneys. I am a defense attorney.

19 Most jurors, most people, don't
20 like attorneys. Especially defense lawyers.
21 They think they are going to be slick and
22 tricky, and I said to you when we started this
23 case, I said I promise you, my questions will
24 not be slick and they won't be tricky.

25 They'll be the same questions any

1 CLOSING/Mr. Keahon

2 one of you would ask, standing behind that
3 podium, hearing the answers from that witness
4 stand.

5 I hope you agree I'm not slick and
6 tricky. I hope you believe that I'm prepared,
7 and I take very seriously what I do.

8 Unfortunately most guys, as you get
9 older and older, you get a little bit better
10 because you do it a lot. But it seems, and
11 I've seen, as you get older and older, a lot
12 of guys take it for granted, and they forget
13 that somebody's life is on the line and they
14 walk through it because they are supposed to
15 be good. I hope you don't find that I've
16 walked through this.

17 I was starting to say just because
18 they have the title of district attorneys
19 doesn't give them any more credibility than I
20 have. We take the same oath as other
21 attorneys to act in a proper fashion, to fight
22 for our respective cause, and to do it the
23 right way.

24 But unfortunately, some jurors,
25 they think that the young fella is arrested

1 CLOSING/Mr. Keahon

2 and charged and indicted, there must be the
3 proof, or we wouldn't be here. We wouldn't be
4 here, in a courtroom like this, with a judge
5 like this. And with talented prosecutors
6 fighting every day.

7 But you and I know, and you have
8 told me in jury selection, innocent people get
9 charged with crimes, innocent people get to
10 this stage of the proceeding, and
11 unfortunately, innocent people sometimes get
12 convicted.

13 When we talk about the witnesses,
14 and the judge will talk to you about it also,
15 when you're judging the credibility of a
16 witness, look to see if they are gaining a
17 benefit from the prosecution. Have they been
18 promised something? Have they been promised
19 no jail? Have they been promised dismissal of
20 the charges. Why isn't that something you
21 would want to consider? Can they do that?
22 Yeah, sure, they can do it. I would like to
23 have the ability to call a witness and say by
24 the way, you got no problem, on anything. I
25 can't do it. They can. And they did do it in

1 CLOSING/Mr. Keahon

2 this case.

3 They did it with Valerie Rodriguez.
4 You saw there was a proffer agreement where
5 she could be prosecuted. They read her her
6 rights, and then Det. Gabriele went through
7 his thing. We want him, we want him, we want
8 him, and you're okay. We'll put you in the
9 grand jury and we'll give you immunity, and
10 that is the ability they have, and that's what
11 they did. They put Nigel DeFreitas in the
12 grand jury. Immunity. Two times. I can't
13 give immunity to anybody.

14 Anita Bryant. She gets arrested.
15 They make a plea agreement with her. She has
16 to plead to one felony. She has to plead to
17 one misdemeanor. But, if she's willing to
18 testify against him, then the agreement which
19 you saw in evidence says they'll dismiss the
20 felony and they'll give her a conditional
21 discharge on the misdemeanor, meaning no jail,
22 no probation.

23 But it goes even further than that.
24 Because notwithstanding what that agreement
25 said, that you saw in evidence, Ms. Bryant

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2 said, no, that is not her understanding. Her
3 understanding from the district attorney's
4 office is that all charges will be dismissed.
5 That's what she said to you.

6 Yet, they put an agreement on the
7 screen saying that if she testifies against
8 him and cooperates, they'll dismiss the felony
9 but the misdemeanor conviction is still there,
10 and she'll get a conditional discharge. So
11 which is it? What they say it is or what she
12 says it is?

13 The computer. You heard me say to
14 Det. Gabriele, that computer, did you do a
15 background on it, that was taken out of that
16 92 Howland Avenue? Did you find out when it
17 was put together? When it got to this
18 country. Where it was sold and to whom it was
19 sold? Yes, I did. I said, you did that,
20 Det. Gabriele, because I demanded that you do
21 it during this trial. Isn't that true? And
22 he said yes. And I said prior to that, you
23 made no effort at all. To find out where,
24 when, and how that computer came into this
25 country, or when. Because you have all those

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2 loan victims, in September, October, November,
3 December. What computer were they done on?
4 How could they not make that effort? Why does
5 it take myself to make that demand?

6 I know you guys aren't detectives.
7 But one of the first things you would have
8 done is, how do we attach that computer to Mr.
9 Whitehead? Let's find out. We know the
10 brand. We know the serial number. Let's
11 contact Gateway. When was it manufactured?
12 Where was it sold? In what retail store and
13 who bought it? Every one of you would have
14 done that. They choose not to. How can that
15 not be important?

16 We heard Mr. Taneja testify. He
17 was the AeroBeep fella. Remember, there was a
18 big -- a lot of emphasis put on, those two
19 blocks of ten and, thirteen voicemail box
20 numbers, and Mr. Taneja came in here and he
21 testified on direct. I don't think I asked
22 him any questions at all. I'm not sure.

23 And then, when I'm cross-examining
24 Det. Gabriele, I stumbled on something. I
25 said to him, "Mr. Taneja, when you spoke to

1 CLOSING/Mr. Keahon

2 him, what did you do?"

3 "I showed him the picture."

4 "You showed him a picture? Of

5 who?"

6 "Of Mr. Whitehead."

7 I said, "Did you make any notes or
8 reports that you did that?"

9 "No. Well, did he identify him?"

10 "No."

11 I said, "Don't you think that is
12 something I should be told?"

13 I don't know what his answer was.

14 I said, "Are you aware of anybody that ever
15 told me about this?"

16 Now, talk about fairness, folks.

17 You have a fellow that is on trial, they show
18 a witness -- one of the main witnesses in the
19 case his picture, and he can't identify him
20 and they don't tell me? You wouldn't like
21 that done to you or yours.

22 You know, you can't trust this
23 case. How many times during this trial did
24 you shake your heads or put your hair down, or
25 head down, and say, I can't believe it? We

1 CLOSING/Mr. Keahon

2 have Mr. Wall come in, from Kings Cycles. The
3 only thing he did was identify Anita Bryant as
4 going in to do the scam. We had Mr. Tunde
5 Ojo, from Kwik Digital fax, which we heard so
6 much about from Det. Gabriele. We find out
7 that Mr. Pearl and Det. Gabriele make a visit
8 to him. Next day -- they come back a second
9 day. Then they go see another employee. Of
10 Mr. Ojo. But he doesn't come in here and say
11 "That's the guy".

12 Gilda Tricaró, one of the first
13 witnesses from Baron Honda. She came in here
14 and I believe it was her testimony and you can
15 ask for it to be re-read, anything we say as
16 attorneys on summation, as the judge told you,
17 is not evidence. And if your recollection is
18 different than ours, yours controls. If
19 you're unsure, you have every right, you can
20 say I'm not sure Keahon is right on what Mr.
21 Tricaró said. Send a note to the judge:

22 "Can we specifically have what if
23 anything Ms. Tricaró said about Valerie
24 Rodriguez having access or not having access
25 to the Dealer Track program?"

1 CLOSING/Mr. Keahon

2 It's my recollection that Ms.
3 Tricararo came here under oath, an employee of
4 Baron Honda, her own son was a victim, and she
5 said Valerie Rodriguez never had access to the
6 Dealer Track program.

7 Valerie Rodriguez's testimony.
8 Page 105. Sit back, relax as best you can, it
9 is five or six minutes:

10 (The following was read to the jury
11 by Mr. Keahon):

12 Question: Well, am I correct that
13 you've testified in the grand jury that you
14 only had access to those credit reports on the
15 computer, for 30 days?

16 "Answer: Yes, approximately 30
17 days.

18 "Question: Am I correct that your
19 testimony in the grand jury, was that you only
20 have access to those credit reports for 30
21 days, right?

22 "Answer: Yes.

23 "Question: You didn't have, as
24 you've told us, the password until sometime in
25 November, that is what you told us, right?

1 CLOSING/Mr. Keahon

2 "Answer: I believe so.

3 "Question: We have had a series of
4 identity theft victims testify in this
5 courtroom to purchasing cars at the end of
6 August, the beginning of September, the middle
7 of September, the end of September, the
8 beginning of October, the middle of October.
9 Are you aware of that?

10 "Answer: No.

11 "Question: There came a point in
12 your testimony yesterday, Ms. Rodriguez, that
13 you told the jury about working at home, and
14 that my client saw you working and that you
15 explained to him what you were doing and you
16 explained to him about the Dealer Track
17 program. Do you remember testifying to that?

18 "Answer: Yes.

19 "Question: You said he was
20 fascinated.

21 "Answer: Yes.

22 "Do you recall during that
23 testimony I got up and I asked the court what
24 time period you were speaking about it, do you
25 remember when I did that at that point?

1 CLOSING/Mr. Keahon

2 "Answer: No.

3 "Question: Do you recall,
4 indicating the time period you're talking
5 about, when you testified that my client was
6 fascinated after you explained to him about
7 the Dealer Track program was November, or
8 December? Of 2004? Do you recall
9 testifying to that.

10 "Answer: Yes.

11 "Question: Yesterday?

12 "Answer: Yes.

13 "Question: So that conversation
14 could have been in November or December based
15 upon your testimony yesterday, right?

16 "Answer: Yes.

17 "Question: Do you recall if the
18 event that took place as you've testified to
19 in your apartment when you were working on the
20 Dealer Track program, and you first explained
21 to Lamar when he was there, what you were
22 doing, and he was fascinated, if that was in
23 November or December?

24 "When was it after that that he
25 asked you for leads? Was it a week after

1 CLOSING/Mr. Keahon

2 November or December? Was it two weeks? Was
3 it three weeks?

4 "Answer: Maybe even a day or two
5 later.

6 "Question: Okay. You've read
7 your grand jury testimony, you've told us,
8 right?

9 "Answer: Yes."

10 "Do you recall, at Page 25, Line 18
11 being asked this question:

12 "'Quote, 'He asked you to do
13 something for him'.

14 "'Yes'.

15 "'Question: What did he ask you
16 to do'.

17 "'Answer: He asked me once,
18 probably two weeks after, I explained to him
19 about the system.'

20 'He asked me for some leads.'"

21 "Answer: Yes.

22 "Is that testimony accurate, that
23 you gave in the grand jury?

24 "Answer: I'm not sure of the time
25 so yes.

1 CLOSING/Mr. Keahon

2 "Question: You didn't tell the
3 jury you weren't sure of the time, did you?

4 "Answer: No.

5 "You were asked that question and
6 gave a specific answer did you not, ma'am?

7 "Answer: Yes.

8 "Question: You told them that it
9 was two weeks after. You indicated, 'He asked
10 me once probably two weeks after I actually
11 explained to him about the system. He asked
12 me for some leads.

13 "Answer: Right, yes.

14 "Question: If you explained it to
15 him in November or December, two weeks after
16 would be December, January.

17 "Answer: I don't know. It could
18 have been November. It could have been
19 December. If it was the beginning of
20 November, then I guess the middle of that
21 month or the end of, towards that month, it
22 was then.

23 "Question: So it could have been
24 the middle, toward the end of November, right?

25 "Answer: Yes.

1 CLOSING/Mr. Keahon

2 "Question: Then you testified
3 yesterday that after he -- after he asked you
4 for leads, at a later time he called you and
5 asked you for the password.

6 "Answer: Yes.

7 "Question: And that was two weeks
8 after that?

9 "Answer: Yes.

10 "Question: Ms. Rodriguez, in
11 November or December, you explained to him
12 what the Dealer Track program is, correct?

13 "Answer: Yes.

14 "Two weeks after that, he asked you
15 for the leads.

16 "Answer: Yes.

17 "Question: Two weeks go by and he
18 calls you, by your testimony, and asked you
19 for the password?

20 "Answer: Yes.

21 "Question: Did you tell him the
22 password was changed?

23 "Answer: Yes.

24 "Question: You never told the
25 district attorney's office or law enforcement

1 CLOSING/Mr. Keahon

2 that the password was ever changed, did you?

3 "Answer: Yes, I mentioned it.

4 "Question: Who did you mention it
5 to?

6 "Answer: To -- because they asked
7 me how -- did it ever change, how frequent did
8 it change? So I made reference to the
9 detectives, or Mr. Pearl that...

10 "Question: Well? Go ahead, I'm
11 sorry.

12 "Answer: Sorry.

13 "Question: You had a chance.

14 "Answer: I'm not even saying at
15 that time that it changed. I said that
16 because I wanted to get off the topic.

17 "Question: So it hadn't changed.

18 "Answer: Not to my knowledge.

19 "Question: But didn't you just
20 tell me that you told the detectives and the
21 district attorney that it had changed?

22 "Answer: Yes, it did change. At
23 one point, it did.

24 "Question: Didn't you just tell me
25 now, that it never changed?

1 CLOSING/Mr. Keahon

2 "Answer: I didn't say that. I
3 said at the time, when I was talking to him,
4 to my knowledge it did not change. I told
5 them that.

6 "So it changed sometime after that.

7 "Answer: It did in fact change.

8 "Question: When?

9 "Answer. I guess it would be safe
10 to say January."

11 She testified to you folks, she
12 worked there from September to December. She
13 wasn't working there in January.

14 "Question: If he's calling you in
15 the end of November or December, and he's got
16 the password, and he's asking you if it
17 changed, then he didn't have the password
18 because it didn't change. It didn't change
19 until January?

20 "Question: You told us that the
21 password changed in January, yes?

22 "Answer: I believe so.

23 "You told us, ma'am, that you had
24 the discussion with him about the Dealer Track
25 program in November or December, and that two

1 CLOSING/Mr. Keahon

2 weeks after that, he asked you for leads. And
3 that sometime after that, he calls and asked
4 you for the code, right?

5 "Answer: Yes.

6 "Question: And then as part of
7 that conversation, he asked you if the code
8 was changed.

9 "Answer: Yes.

10 "Question: Did the detectives
11 ever ask you for permission to examine your
12 computer?

13 "Answer: No.

14 "Question: To determine what was
15 done on the computer if it was done, if it was
16 done?

17 "Answer: No.

18 "Question: Each time you logged on
19 your computer, a record of that is made within
20 the computer, is it not?

21 "Answer: I'm sorry, I'm just
22 thinking back to the other questions that you
23 asked me regarding them asking me to look over
24 my computer. I'm not sure.

25 "Question: I'll go back.

1 CLOSING/Mr. Keahon

2 Did the detectives assigned to this
3 case, or the district attorney, ever ask you
4 for permission to examine that desktop
5 computer?

6 "Answer: I'm not sure. I think,
7 I remember -- um, telling them that the
8 computer -- we don't have anymore. So
9 possibly.

10 "Question: When did that computer
11 go?

12 "Answer: I don't know. My mom
13 got a new one. I'm sorry.

14 "Question: You couldn't use two
15 computers?

16 "Answer: I'm sorry, it's not that.
17 I take it back.

18 "Question: So your Mom didn't get
19 a new computer.

20 "Answer: I'm not sure. I don't
21 remember. I think it was a new monitor not
22 the computer itself.

23 "Question: So you still have the
24 computer.

25 "Answer: Yes.

1 CLOSING/Mr. Keahon

2 "Question: Well, has anybody ever
3 asked you for permission to examine it?

4 "Answer: No.

5 "Question: To see when you went on
6 the computer, what you did on the computer?

7 "Answer: No.

8 "Question. When you used that
9 password or didn't use the password.

10 "Answer: No.

11 "Question: They could make a
12 chart of what is on your computer.

13 "Answer: No answer."

14 Nigel DeFreitas's -- testimony.
15 We'll skip him for a minute. I read to you
16 some of the testimony of Ms. Rodriguez.

17 Let me cover a few more points so I
18 don't bore you.

19 Experts. The fingerprint expert.
20 On direct examination, she never mentioned to
21 you, nor did the district attorney ask
22 questions about that known print of my client.
23 The print that had all the white lines going
24 through it, which you didn't see in the
25 unknown that they were comparing it to. No

1 CLOSING/Mr. Keahon

2 mention of that on direct examination.

3 On cross-examination, halfway
4 through it, I said, ma'am, on the known print
5 of Lamar Whitehead, we see these lines going
6 through that don't appear in the unknown. I
7 said, "What are they?"

8 She said, and there was silence for
9 10 seconds. She said "Oh, those are creases.
10 They are only temporary."

11 I said, "Temporary"? She says
12 "Yes, they are just temporary."

13 I said, "Can they be temporary for
14 ten years?" She says yes.

15 And then she said, "But Mr. Keahon,
16 I can fingerprint your client right now in
17 court, in front of this jury, to see if those
18 creases are still there."

19 What am I supposed to do with that?
20 Run away, or say okay, do it. So we did it.
21 She fingerprinted him right here in front of
22 you folks. And the print came back with the
23 creases. Same as the original one, and
24 different than what they claim to be the
25 unknown. That was the match.

1 CLOSING/Mr. Keahon

2 MR. PEARL: Objection. That was
3 not the testimony.

4 THE COURT: Overruled. Overruled.

5 MR. KEAHON: Once again, if you
6 think I'm misstating anything, go back to her
7 testimony where they had the chart with the
8 known, the unknown, I asked her about the
9 creases. She said they are temporary. I said
10 how temporary? Can they be there for ten
11 years? Hesitates. Yes. Looked to see if
12 there was an immediate challenge. She said
13 Mr. Keahon, I can fingerprint him right here,
14 in this courtroom, to see if they're still
15 there. And she did, and they still were
16 there.

17 I don't know that any of us are
18 called experts. They call themselves experts.
19 And they don't want to be challenged at all.
20 You know what? Too bad. What am I supposed
21 to do say, "Oh, you're right? You're an
22 expert."

23 I asked about -- "Are there any
24 standards whatsoever by which you folks do
25 this stuff?"

1 CLOSING/Mr. Keahon

2 No. Do you have to find so many
3 matches in order for you to say I could form
4 an opinion and conclusion? No. Is it all
5 subjective? Yes. Is it all subjective. By
6 you? Yes. Are there any standards or data,
7 statistical data that you go to to see what is
8 going on? No.

9 Mr. Luber, the handwriting expert,
10 goes through all of his background, they put
11 the stand in front of you. They put that big
12 chart up, with what they claim are knowns, and
13 purported known as. And he spends about 30
14 seconds with you, telling you why there is a
15 match. I ask him on cross-examination:

16 Are there any standards you work
17 under? Is there -- any data that you use?
18 Is it all subjective? And remember he said,
19 "It's all up here."

20 And I said, "Can I see it?" And
21 then I had him come down, and I went through
22 the chart with him, and I think we went over
23 about 40 differences in the known, unknowns.
24 And he stood to the side, and you know, he
25 said very smugly, "That is a difference?"

1 CLOSING/Mr. Keahon

2 "Yes, that is a difference". Not a
3 big deal.

4 So I'm figuring okay, on redirect,
5 he's really going to slam it to me and show us
6 why no big deal. But he doesn't. They don't
7 ask him any more questions on redirect. It is
8 merely he says he doesn't make a mistake, and
9 Mr. Keahon, you're a fool for doing this. But
10 if I take him through -- picture you as me,
11 and there is an expert, and you put some work
12 into it. You've gone through all this stuff.
13 You see differences, and you say isn't that
14 different? Isn't that different? Isn't that
15 different? And the witness goes, different
16 but -- wouldn't you expect them to stand up
17 and say, "You know what? Mr. Keahon is a
18 jerk. Tell him why it is not a big deal, and
19 let's straighten this out." They didn't even
20 make an attempt.

21 They just want you to say, "You
22 know what? I said it. Believe it." And that
23 is arrogant. You saw it, and you know it.

24 Am I supposed to be a good boy and
25 just go home? You know, if I didn't get up

1 CLOSING/Mr. Keahon

2 and ask questions on cross-examination, this
3 case would have been a stampede for
4 conviction. Can you imagine what you folks
5 would have thought? You would have thought
6 everything they did was right. What a killer
7 of a case. It is overwhelming.

8 You know, the horrible thing is
9 people get arrested and charged with crimes.
10 They don't know who is a good lawyer. Every
11 lawyer says they are good. "Oh, that's my
12 specialty. You should have me." Can you
13 imagine what happens in this criminal justice
14 system? With the guys that take the money and
15 walk through the deal and don't want to get up
16 and fight? I am proud of this system. I'm
17 proud to be a part of it. I think it works. I
18 did what they did for 12 years, and I think
19 I'm very fortunate to do what I do now.

20 Now you're going to have to listen
21 to Mr. DeFreitas.

22 You are what they called a captured
23 audience. There is nowhere to go.

24 I don't have all that much longer,
25 I really don't. If anybody needs a break

1 CLOSING/Mr. Keahon

2 raise your hand -- I hope it's ten minutes,
3 maybe? Twelve?

4 Mr. DeFreitas:

5 "Question: Did the detectives come
6 to your house and show you a search warrant.

7 "Answer: No. I wouldn't let them
8 in my house until they showed me the search
9 warrant they stayed outside my house.

10 "Question: I think you told us on
11 direct examination, that they knocked on the
12 door or rang the bell.

13 "Answer: My brother was going
14 away and as he was leaving, a few cop cars
15 came.

16 "The Court: Sir, please answer.

17 "Answer: Police cars approached
18 the house. I heard through the window what
19 was going on. I came to the door and there
20 they had my brother and myself. They said,
21 are you Nigel DeFreitas? Are you Desmond
22 DeFreitas? And that is where they stayed
23 outside.

24 "Question: So when the detectives
25 first arrived at your house, they knew the

1 CLOSING/Mr. Keahon

2 name Nigel DeFreitas?

3 "Answer: Yes.

4 "Question: They knew the name

5 Desmond DeFreitas.

6 "Answer: Yes.

7 "Question: Didn't, on direct

8 examination, you indicate that they wanted to

9 come in and you wouldn't let them in until

10 they showed you a search warrant?

11 "Answer: Until they showed me the

12 warrant, yes.

13 "Question: So they identified

14 themselves as the detectives.

15 "Answer: Yes.

16 "Question: They were in cars that

17 looked like detectives, unmarked vehicles,

18 right?

19 "Answer: Yes.

20 "Question: They showed you their

21 identification, did they not?

22 "Answer: Yes.

23 "Question: You told them you're

24 not coming in the house without a search

25 warrant.

1 CLOSING/Mr. Keahon

2 "Answer: Yes.

3 "Question: They produced the
4 search warrant.

5 "Answer: Yes.

6 "Question: Are you suggesting to
7 us that the detectives did not speak with your
8 brother for a period of time?

9 "Answer: They spoke with my
10 brother.

11 "Question: Where did they do
12 that? Did they do this in apartment or did
13 they do that in his apartment.

14 "Answer: They did that outside my
15 house.

16 "Question: Did your brother come
17 back into the house.

18 "Answer: Come back into the house?
19 I can't recall. I'm not sure. He might have.
20 I don't know.

21 "Question: Do you know whether or
22 not they took a statement from your brother?

23 "Answer: No.

24 "Question: No, you don't know, or
25 no, they didn't answer.

1 CLOSING/Mr. Keahon

2 "Answer: No, I don't remember they
3 did.

4 "Question: You told us that your
5 brother was going away on vacation. He was
6 going to the Bahamas, wasn't he?

7 "Answer: I have no idea where he
8 was going. He was going away.

9 "Question: He was going with the
10 girlfriend.

11 "Answer: That is how the whole
12 thing started. I don't know where he was
13 going. The girlfriend was there, with him.

14 "Question: And they were about to
15 go to the airport.

16 "Answer: Yes.

17 "Question: As far as your
18 brother's upstairs apartment, how many rooms
19 were contained up there?

20 "Answer: Three rooms.

21 "Question: What are they?

22 "Answer: Three bedrooms.

23 "Question: Three bedrooms, a
24 living room, and a kitchen?

25 "Answer: A living room, bedroom,

1 CLOSING/Mr. Keahon

2 kitchen.

3 "Question: Was there someone else
4 living there at the time beside yourself and
5 your brother?

6 "Answer: Yes.

7 "Question: Who was that?

8 "Answer: Chris Cole.

9 "Question: Is Chris Cole a male or
10 a female.

11 "Answer: Male.

12 "Question: How old was Chris Cole?

13 "Answer: I have no idea, might be
14 33, I'm not sure.

15 "Question: What does he do for a
16 living?

17 "Answer: He's a bouncer. He's a
18 security guard.

19 "Question: Where did he work at
20 the time?

21 "Answer: I don't know.

22 "Question: What vehicles were at
23 the residence at that time?

24 "Answer: My brother's vehicle,
25 and my vehicle.

1 CLOSING/Mr. Keahon

2 "Question: What was your
3 brother's vehicle in 2005?

4 "Answer: I don't know if he had
5 his Tahoe then. I can't recall.

6 "Question: It was a Jeep Grand
7 Cherokee, wasn't it? Maroon.

8 "Answer: Yes."

9 You'll see later on, when I accuse
10 him and Kylie Copeland and his brother, of
11 doing an identity fraud on that Jeep Grand
12 Cherokee, he switches off to it is not his
13 brother.

14 But on Page 42:

15 "Answer: My vehicle or my
16 brother's vehicle.

17 "Question: Brother's vehicle, it
18 was a Jeep Grand Cherokee, wasn't it, maroon?

19 "Answer: Yes.

20 "Question: Burgundy?

21 "Answer: Yes. He drove a Jeep
22 Grand Cherokee.

23 "Question: As a matter of fact,
24 when he left to go to the airport, he was in
25 that vehicle with his girlfriend, was he not?

1 CLOSING/Mr. Keahon

2 "Answer: I can't recall. He might
3 have been.

4 "Question: Did you tell us on
5 direct examination, that Lamar Whitehead had
6 been at your house all the time?

7 "Answer: Yes.

8 "Question: Did that start the year
9 2000, 2001, 2002?

10 "Answer: He was at my house all
11 the time.

12 "Question: You've told us that
13 there was a period of time for about a year
14 when he was out in New Mexico, at college,
15 right?

16 "Answer: Yes.

17 "Question: Other than that, from
18 the year 2002 to 2005, taking out that one
19 year whenever it was, because you don't have a
20 recollection, is it a fair statement that he
21 was a good friend of your brother's?

22 "Answer: Yes.

23 "Question: And he was at your
24 house all the time other than the year you say
25 he was in New Mexico?

1 CLOSING/Mr. Keahon

2 "Answer: Pretty much.

3 "Question: In January of 2005, he
4 was still a frequent visitor to your house?

5 "Answer: Yes, I think so.

6 "Question: He'd come by to hang
7 out with your brother?

8 "Answer: Yes.

9 "Question: Desmond, your brother,
10 do you know how many phones he may have had in
11 2004?

12 "Answer: No.

13 "Question: Now, that Jeep Grand
14 Cherokee that we talked about, that burgundy
15 Jeep that your brother was driving, back in
16 2005, when did he first get that car?

17 "Answer: He drove it around. I
18 don't know if it was his."

19 You heard the previous testimony
20 where he said it was.

21 "Question: Did he drive it in
22 2002?

23 "Answer: Yes, he drove it around
24 in 2002.

25 "Question: 2003?

1 CLOSING/Mr. Keahon

2 "Answer: I think so.

3 "Question: 2004?

4 "Answer: I don't remember.

5 "Question: It was parked at your
6 house every one of those years, wasn't it?

7 "Answer: I don't know.

8 "Question: Did your brother have
9 a registration for that vehicle.

10 "Answer: I have no idea.

11 "Question: Well, how often did
12 your brother drive that vehicle, in 2002,
13 2003, 2004 and 2005?

14 "Answer: I don't know.

15 "Question: What was the last time
16 you saw your brother drive that vehicle?

17 "Answer: Maybe -- I can't recall.
18 I don't even know. He hasn't had it in so
19 long.

20 "Question: Two weeks ago, it was
21 parked at your house, was it not.

22 "Answer: I have no idea."

23 "Question: What do you mean you
24 have no idea? You live at that house.

25 "Answer: My brother doesn't drive

1 CLOSING/Mr. Keahon

2 that car. He has his own car.

3 "Question: Two weeks ago, was that
4 car parked at your house?

5 Answer: I have no idea.

6 "Question: You told us your
7 brother drove that car in 2002, right?

8 Answer: Yes.

9 "Question: What year car did he
10 have in 2002?

11 Answer: He would drive my car.

12 "Question: When you had your car,
13 what other car would he drive? He had no
14 other car, did he?

15 Answer: He'd ask friends.

16 "Question: That was his car,
17 wasn't it?

18 Answer: I don't know. I don't
19 think so. No, it wasn't."

20 "Question: You and Kylie Copeland
21 and your brother did an identity fraud
22 on -- you and Kylie Copeland and your brother
23 did an identity fraud, didn't you?

24 Answer: No.

25 "Question: Did you get a call from

1 CLOSING/Mr. Keahon

2 Lamar Whitehead's Mom, on January 25th of
3 2006? Telling you guys, you and your
4 brother, that he had been arrested.

5 "Answer: No, I never spoke to
6 Lamar's Mom. She never called me up.

7 "Question: Do you know his Mom?

8 "Answer: I know his Mom.

9 "Question: Have you seen her
10 before today?

11 "Answer: Yes, I have.

12 "Question: Where is she seated?

13 "Answer: She's seated in the back.

14 "Question: Did she call you on
15 January 26th, 2006, the day he got arrested?
16 I misspoke it was January 25th -- to tell you
17 that he was arrested.

18 "Answer: Not that I recall.

19 "Question: Didn't you go the next
20 day, you and your brother, go the next day, on
21 the 26th of January, to Teaneck, New Jersey?

22 "Answer: I have never been to his
23 house, to Teaneck, New Jersey.

24 "Question: Do you know he has a
25 house in Teaneck, New Jersey?

1 CLOSING/Mr. Keahon

2 "Answer: Do I know he has?

3 "Question: Yes.

4 "Answer I've heard.

5 "Question: When did he purchase
6 the house.

7 "Answer: I have no idea.

8 "Question: Was it in 2005?

9 "Answer: I can't remember.

10 "Question: Did your brother,
11 Desmond, have a key to that house?

12 "Answer: I have no idea. I don't
13 know.

14 "Question: Did your brother go
15 there on January 26th of 2006?"

16 My client was arrested on January
17 25 of 2006, he was in jail, and they did the
18 search warrant on the house on January 27th of
19 2006.

20 "Question: Did your brother go
21 there on January 26th of 2006?

22 "Answer: I don't know."

23 You'll recall, I asked Det.

24 Gabriele, after Nigel DeFreitas testified, did
25 the district attorney or did Nigel DeFreitas

1 CLOSING/Mr. Keahon

2 or anyone talk to you about that maroon Grand
3 Cherokee Jeep? That I accused him of identity
4 fraud with Kylie Copeland and his brother?

5 No.

6 Now, you all heard what was in that
7 record. You don't think anybody spoke to Det.
8 Gabriele and said, maybe we should look into
9 this? Or did they choose not to? How do you
10 not? How do you not say to Mr. Keahon, here
11 comes a smack, and you put a witness on the
12 stand and you say, that Grand Cherokee Jeep,
13 maroon, belonged to somebody else, here is the
14 registration, here is the proof and now,
15 jurors, you can't believe what Mr. Keahon
16 says.

17 He chose not to. I mean, how do
18 you not do that? If somebody -- if you were
19 prosecuting this case, and some lawyer got up
20 and accused one of your witnesses of being in
21 cahoots with Kylie Copeland and his brother,
22 Desmond, doing a fraud on this case, they did
23 so much work on this case, they couldn't prove
24 to you what his brother initially says was his
25 vehicle and then switches, they couldn't prove

1 CLOSING/Mr. Keahon

2 to you that Keahon is full of it, you can't
3 trust him?

4 You know, they can do all their
5 charts, and you're going to get a lot of them
6 in summation, and you're going to have power
7 point presentations and diagrams and arrows
8 going eighteen different ways. But you know
9 what, it is baloney. It doesn't prove who
10 was on the phone. It doesn't prove who was on
11 the computer. It doesn't prove anything
12 beyond a reasonable doubt.

13 Det. Gabriele says that they find
14 Desmond DeFreitas' personal i.d. with the
15 picture at Lamar's house. After my client is
16 arrested. On January 25th of 2006. They find
17 it on the 27th, 2006. Det. Gabriele says he
18 found it in a bag, but you have no idea what
19 was in any bags. You have no idea what if any
20 of this evidence was found in that house, or
21 where, in this house.

22 And in this day and age, 2008, we
23 have people walking on planets, the moon,
24 everything else, all this scientific stuff, I
25 said, aren't you guys required to take a video

1 CLOSING/Mr. Keahon

2 camera and videotape of the search that you
3 do? And the items that you found and where
4 you found them? His answer, no, we're not
5 required to do it. Well, you know what?
6 They rely so much on you accepting them
7 because they say they're a detective. Why do
8 they have to do that? Why have you folks
9 guess? Why have a guy like me say things and
10 not be able to answer it, when they can say,
11 video, that's what we did. There is the bags.
12 We picked this out. That is a killer for
13 Lamar. Here comes another one. There is
14 another one. Mr. Keahon, be my guest.
15 Cross-examine that. Or do it with the car.

16 The sleeve. The secret zipper
17 sleeve. It was stuck over here with the
18 damaging Rhonda Ghassabian note in it, or
19 something, and this here and that there, and
20 that there. You know what? Because they
21 rely on you folks saying he's not going to
22 mislead us.

23 You know what? You don't know him.
24 You owe no duty to him. And the only way this
25 stuff gets done right, for those of you that

1 CLOSING/Mr. Keahon

2 have friends that might get in trouble, do it
3 the right way. Don't count on us being the
4 strong conservative Suffolk County juror, that
5 we okay everything that you want to do.

6 I swear that is the only thing that
7 changes anything. You tell them: Do it the
8 right way. Don't count on me.

9 Please listen very carefully to the
10 judge's charge on what circumstantial evidence
11 is. This charge is kind of complicated. I
12 don't understand it, and I have been doing
13 this 35 years because it is the way the law is
14 written, and the judge has to give these
15 specific instructions. So it is real
16 complicated. But listen to the charge on
17 circumstantial evidence.

18 You're going to hear that you can't
19 base an inference on an inference. You cannot
20 infer proof of a circumstantial fact from
21 proof of another circumstantial fact, and the
22 judge will explain that in detail. Some of
23 you will almost go to sleep. Okay.

24 Det. Gabriele says he recovers a
25 Connecticut non-governmental i.d. from the

1 CLOSING/Mr. Keahon

2 house, and the address on it says
3 "H-A-R-F-O-R-D, Connecticut". They say that
4 is the same address as a fraud case, but it is
5 not. It is not Hartford, Connecticut, but
6 they'll tell you it's my client. They will
7 tell you he was on a motorcycle, he was in a
8 car. So what? It is proof of nothing.

9 This is it, we're on the last one.

10 You're going to hear next from the
11 prosecutor and the judge will give you the
12 law. Then you will begin your deliberations.
13 I hope there are those of you on this jury
14 that don't trust this case, and that there are
15 those of you who feel lies have been told to
16 you, under oath, that witnesses have
17 intentionally misled you, or evidence has been
18 been misstated or hidden. And when you
19 discuss this case amongst yourselves, if you
20 believe this case has not been proven to your
21 satisfaction, please do not give in to the
22 pressures of others on the jury. And don't
23 let the time restraints force you to a quick
24 verdict. If you truly believe in your hearts,
25 after thinking about all the evidence that you

1 CLOSING/Mr. Keahon

2 don't trust this case, you have problems with
3 it, and you got reasonable doubts, obviously,
4 listen to the other jurors. But after
5 listening to them, if you still feel that way,
6 stand strong. Because a week from now, you
7 can't call me and say, Mr. Keahon, you know, I
8 think I made a wrong decision. There is no
9 backsies in this one.

10 Discuss it fully, and after fully
11 discussing it, if you still feel that it is
12 not proven, stick to your guns. And if, as
13 jurors, you cannot reach a decision, send a
14 note to the judge saying we can't reach a
15 decision. We can't agree. The judge may say,
16 go back out, try it again. So you do. You go
17 back in and discuss it again. If after doing
18 it the second time, or the third time, you
19 say, Hey, look, I'm not budging. I've
20 listened to all of you. I am not giving up my
21 position.

22 Send another note. And you know
23 what? If we have to re-try this case again,
24 maybe they'll do it the right way.

25 You have been great. You really

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2 have. Thank you very much.

3 THE COURT: Thank you, Mr. Keahon.

4 Ms. Franzese, Mr. Pearl, the jury
5 will be given a brief recess before your
6 closing arguments. Thank you.

7 I remind you not to form or express
8 an opinion about the case until it is
9 submitted to you for deliberations. As I've
10 told you, do not discuss this case or any
11 matter connected to the trial amongst
12 yourselves or with anyone else. Nor may you
13 allow it to be discussed in your presence.

14 Don't read or listen to accounts
15 reported in the news media, don't visit or
16 view the place or places where the offense
17 charged was allegedly committed or any other
18 place involved in this case, and promptly
19 report to the court by way of coming to me
20 personally, through a court officer, any
21 incident within your knowledge involving any
22 attempt to influence any member of the jury.

23 (The Jury is excused)

24 THE COURT: The court will take a
25 brief recess.

1 People v. Lamar Whitehead

2 (Brief recess)

3 THE CLERK: Case on trial, people
4 versus Whitehead. All parties are present
5 outside the presence of the jury.

6 THE COURT: The court noticed that
7 a certain exhibit was set up.

8 Officer, what is the number on
9 that?

10 THE COURT OFFICER: 79, your Honor.

11 THE COURT: Thank you.

12 Notwithstanding the fact that it
13 had been admitted into evidence, in light of
14 the court's subsequent rulings, if the people
15 would be so kind as to redact the term
16 "personal cell phone".

17 MR. PEARL: Already done, judge.

18 That is an i.d. chart.

19 MR. KEAHON: I have one that says
20 "personal cell phone."

21 MR. PEARL: It is not in evidence.
22 None of these are in evidence.

23 MR. KEAHON: If it is a chart he's
24 going to use even though it is not in
25 evidence....

1 People v. Lamar Whitehead

2 MR. PEARL: I have to redact it,
3 even though it's marked for identification.

4 THE COURT: Gentlemen, gentlemen,
5 we're speaking out of turn right now.

6 Mr. Keahon, you have been apprised
7 that your colleague is intending to use
8 audiovisual aids, certain charts during his
9 summation.

10 Do you wish to be heard?

11 MR. KEAHON: Yes, judge. As to one
12 of the ones marked 181, it has Lamar
13 Whitehead's personal cell phone. That is the
14 only thing I have a problem with on that one.

15 And 182, it has the same thing. It
16 is the only thing I have a problem with on
17 that one, and that's it.

18 THE COURT: Thank you.

19 Mr. Pearl?

20 MR. PEARL: Judge, if I use them.
21 To be honest, I don't know what I'm using yet.
22 In reference to the chart, other than this
23 one.

24 It is an identification chart.
25 It's not in evidence. Anything on there I

1 People v. Lamar Whitehead

2 suggest is fair comment of the evidence,
3 therefore, I should be permitted to use the
4 chart as is.

5 THE COURT: Mr. Keahon, would you
6 dispute it is the right of your adversary to
7 characterize the telephone in question, or to
8 call it, and submit to the jury, it is in fact
9 your client's personal cell phone?

10 MR. KEAHON: I'll stand on the
11 record I've made.

12 THE COURT: Thank you. Then you
13 don't wish to respond to the court's question.

14 MR. KEAHON: No, I don't want to
15 waste time, judge.

16 THE COURT: Thank you.

17 MR. KEAHON: I think I repeatedly
18 said why I don't think it should be done.

19 THE COURT: The well-settled rule
20 on the use of non-evidentiary items is whether
21 or not it would be prejudicial or improper to
22 say, and if it's improper subject to fair
23 comment by the remarks of an advocate, it also
24 can be subject to a non-evidentiary
25 demonstrative device.

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2 The question ultimately is one of
3 prejudice. And not being privy to all of your
4 colleague's demonstrative devices, we'll have
5 to rule on them one at a time. If you feel
6 one of them falls outside of that parameters,
7 and prejudices your client, I'll hear the
8 objection at that point this time.

9 Otherwise, your colleague has the
10 right to make reference to such items. The
11 jury will be admonished they do not constitute
12 evidence.

13 Thank you, your exception is noted,
14 Mr. Keahon.

15 MR. KEAHON: Thank you, judge.

16 THE COURT: Thank you. Are we
17 ready to proceed?

18 MR. PEARL: Yes, your Honor.

19 THE COURT: Thank you. My
20 compliments to the jury.

21 If you notice the jury become
22 discomfitted during your closing argument,
23 perhaps you would suggest a break. Your
24 colleague offered that to the jury during his
25 summation, you'll extend the same courtesies,

1 CLOSING/Mr. Pearl

2 about an hour and a half is the longest that
3 someone can go before expressing an interest
4 for a recess, to stretch their legs.

5 THE COURT OFFICER: The jury is
6 entering.

7 THE COURT: All rise, please.

8 (The following occurred with the
9 jury present):

10 Thank you. Please be seated.

11 THE CLERK: Case on trial, People
12 versus Whitehead, the jury and all parties are
13 present. Counsel waive the roll.

14 THE COURT: Thank you all once
15 again. At this time the people may address
16 the jury and make their closing remarks.

17 MR. PEARL: Thank you, your Honor.

18 May it please the court, Mr.
19 Keahon, ladies and gentlemen of the jury,
20 before I go into my closing, let me start by
21 saying in voir dire, I remember telling you
22 we'd be taking this case to the first day of
23 Spring. I was wrong. We are now well a week
24 after Spring. So I thank you on behalf of
25 everybody in this courtroom, particularly on

1 CLOSING/Mr. Pearl

2 behalf of Assistant District Attorney Franseze
3 and myself. We truly thank you because I know
4 it has been a long trial, and you guys all put
5 in a lot of time and effort and attention. So
6 thank you.

7 The bad news after that, is my
8 closing might last an hour hour and a half.
9 Hopefully, not longer. If it does and anybody
10 feels discomfort and needs a rest, raise your
11 hand, and the judge will grant it.

12 Seven weeks ago, and perhaps over
13 50 witnesses ago, I told you in opening
14 statements that each of you would have the
15 opportunity to bear witness to one man's greed
16 and arrogance, and the damage that one man's
17 greed and arrogance can inflict on law abiding
18 citizens. I suggest what you've seen from the
19 evidence here, ladies and gentlemen is this
20 man's greed, and this man's arrogance.

21 When Mr. Keahon talks about Jeff
22 Luber being arrogant, think about this
23 defendant's greed and arrogance. The greed.
24 I can take anything I want. I don't have to
25 pay for it. And the arrogance is that I'm so

1 CLOSING/Mr. Pearl

2 smart, nobody will ever catch me. I'm smarter
3 than everybody.

4 Now, you saw how this defendant's
5 greed and arrogance affected seventeen of your
6 fellow Suffolk County residents. And this
7 defendant's greed and arrogance didn't stop at
8 the borders of Suffolk County. You saw how he
9 extended into Brooklyn. You saw how Nouri
10 Khabeih, the Brooklyn resident, was victimized
11 by this defendant. That's counts nine and ten
12 of the Indictment, Land Rover Massapequa deal.

13 This defendant, using Nori
14 Khabeih's identity, attempted to steal a
15 \$55,000 Range Rover. You saw how this
16 defendant extended beyond the borders of New
17 York State. He stole the identities, I
18 suggest to you, of David Ridenour, of Rhonda
19 Ghassabian, both from Tennessee -- the
20 person-to-person transactions, ladies and
21 gentlemen of the jury, where the defendant,
22 stealing the identity, starts with Rhonda
23 Ghassabian -- Nerina Sperl. He then steals
24 the identity of Rhonda Ghassabian. He sets up
25 a person-to-person transaction. This was with

1 CLOSING/Mr. Pearl

2 a Porsche Cayenne. This is where the
3 defendant is to have money deposited into one
4 account and money withdrawn in the other.
5 Greed and arrogance, its my money. I deserve
6 it. I didn't work for it, but I deserve it.

7 That's for Rhonda Ghassabian and
8 Nerina Sperl's count.

9 The David Ridenour, Maria Macarle
10 is encompassed within count six of the
11 indictment. That is a person-to-person
12 transaction, where the defendant sets up a
13 stolen identity with Maria Macarle, that is
14 where he uses his co-defendant, Anita Bryant.
15 Make no mistake, that many co-defendants in
16 this case, Anita Bryant, Teisha Lamont, Kylie
17 Copeland. You want to consider Valerie
18 Rodriguez a co-defendant, fine. That is the
19 ring leader, ladies and gentlemen. He's the
20 one that is manipulating all of them.

21 He even extended into the state of
22 Florida, with Christina Brooks. You saw, they
23 all took the stand. They came in and they
24 testified. It is one of these
25 person-to-person transactions, Maria Macarle,

1 CLOSING/Mr. Pearl

2 Christina Brooks, I think this is the 57
3 thousand dollars check he's deposited into one
4 account, and he's trying to take the one,
5 because its my money. I didn't work for it,
6 but it is mine.

7 You saw how Anita Bryant testified
8 she went into the bank and she tried to
9 withdraw 17 thousand dollars at his request.
10 That, ladies and gentlemen is what greed and
11 arrogance is defined as. Not Jeff Luber.

12 This is a thirty-four count
13 Indictment comprised of 29 separate identity
14 thefts. It took over 50, 55 witnesses to be
15 able to put forth the evidence, so we can
16 prove the defendant's guilt beyond a
17 reasonable doubt. If -- I did a closinging
18 argument and I went over every single crime,
19 I'd keep you here for another seven weeks. I
20 won't do that.

21 However, there are charts in
22 evidence, 190 to 209, with the exception of
23 192 or 193, you can ask the judge for them.
24 They detail many of the identity thefts, with
25 the phone spray analysis, these chart, as well

1 CLOSING/Mr. Pearl

2 as the other charts, you can take them into
3 your deliberations.

4 What I'm going to do, is review,
5 however, a few counts. I want to review with
6 you counts two and three, Maria Macarle, count
7 eight. Nerina Sperl Rhonda Ghassabian, counts
8 nine and ten, Nouri Khabeih, and count sixteen
9 overlaps with that, that is the Sprint cell
10 phone in the name of Wojcieh Wachnik.

11 Before I get -- Mr. Keahon is
12 right. There is going to be a power point.
13 There is going to be arrows, not bells and
14 whistles. The reason there is a power point
15 presentation, ladies and gentlemen, is because
16 that's the evidence. Mr. Keahon spent an hour
17 hour and ten minutes, I can't recall, one
18 piece of evidence he talked about. He just
19 glossed over it.

20 And Mr. Keahon did mention being
21 slick and tricky. Let me suggest to you what
22 is slick and tricky. Slick and tricky, is
23 when you put a witness on the stand, Nigel
24 DeFreitas. You make up something about a
25 fabricated Cherokee that was stolen with an

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2 identity theft, with Kylie Copeland, and your
3 brother Desmond, and yourself. There is no
4 evidence to suggest it. You just asked a
5 witness, the witness says no, and then you get
6 in front of jury and you argue like it
7 actually happened. There is no in evidence
8 the record to suggest that a Cherokee was
9 stolen.

10 I suggest to you it is a figment of
11 the defense, of their imagination. The
12 purpose of it, ladies and gentlemen, is
13 because this, that, right here, is where the
14 evidence is. If he can get you thinking over
15 here, about this -- this Cherokee, that may or
16 may not be stolen, he's done his job. Because
17 you're not thinking about the evidence.

18 This Power Point, and the evidence
19 before you, is hopefully going to bring you
20 right back to the evidence.

21 This is the case of People vs.
22 Lamar Whitehead. As Assistant District
23 Attorney Franseze and I told you in opening
24 statements, there is an expression, all roads
25 lead to Rome. This is a case where all

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2 evidence leads to Lamar Whitehead.

3 So where does this case begin? We
4 now all know.

5 MR. PEARL: Judge, can we dim the
6 lights.

7 THE COURT: Yes, certainly.

8 If we could dim the lights, please,
9 officer.

10 MR. PEARL: We all know where it
11 began. It began at Baron Honda. Those are
12 the exhibits in evidence, one through 12.
13 What we know, this is the exception with Nouri
14 Khabeih, is -- what we know, is that everybody
15 that purchased a car at Baron Honda, had a
16 couple of things in common.

17 They did purchase cars at Baron
18 Honda during the same time frame, and they all
19 had excellent credit. These are all victims,
20 Maria Macarle, Nerina and Raymond Sperl,
21 Joseph Sweeney, Wojcieh Wachnik, that is the
22 only person where we don't have an exhibit.

23 Ms. Tricaró testified -- Mr.
24 Wachnik testified he purchased the vehicle
25 from Baron Honda during that same time frame,

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2 around the Fall of 2004.

3 And Mr. Tricarico said they
4 couldn't locate that file. We know there is
5 Briton Lawler, Brookhaven Town Supervisor
6 Brian and Brenda Foley. Brian Smith, the
7 serviceman at Baron Honda, Michael Nolan, an
8 attorney in Suffolk County. Gloria Conaty, a
9 U.S. postal worker, Gerald Thurman, Eric
10 Besso, another well-respected attorney, here
11 in Suffolk County, Kathleen March, Thomas
12 Palladino, and Michael Tricarico, there is an
13 asterisk around his name, because he's the
14 only person other than Nerina Sperl. That
15 didn't purchase a car at Baron Honda, his
16 mother Gilda, the controller at Baron Honda,
17 ran his credit when he was looking to buy the
18 Durango, but his information was put into the
19 Dealer Track program.

20 The other thing all these victims
21 have in common is they are all Suffolk County
22 residents. That is a significant factor,
23 ladies and gentlemen of the jury, because when
24 the judge charges you, you're going to hear,
25 with the exception of counts nine and ten,

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2 that this defendant on or about the dates,
3 assumed the identity of the various victims as
4 Suffolk County residents.

5 Every one of these victims, who
6 testified, are Suffolk County residents. And
7 the two that didn't testify, Gerald Thurman
8 and Brenda Foley, there are stipulations in
9 evidence, it is undisputed they didn't give
10 anybody permission to use their personal
11 indentifying information, and they were
12 Suffolk County residents at the time they
13 purchased the vehicle.

14 What we know, ladies and gentlemen,
15 is that when these individuals purchased
16 vehicles, they all filled out credit
17 applications. Maria Macarle, She gave her
18 name, date of birth, Social Security number
19 ending in 4880.

20 Raymond and Nerina Sperl, once
21 again, name, date of birth, Social Security
22 number. Then you had Brian and Brenda Foley.
23 These are all the credit applications, all in
24 evidence, 1-A through 12-A. Once again, all
25 their personal identifying information.

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2 The judge is going to charge you,
3 that the defendant assumed these victims'
4 identities, as Suffolk County residents, by
5 using their personal indentifying information.
6 The judge will tell you that only means a
7 person's name. In this case the defendant
8 uses their name, date of birth, and Social
9 Security number.

10 What do we know from the evidence?
11 That the defendant's access to Baron Honda was
12 Valerie Rodriguez. This defendant's
13 girlfriend. What do we know? She is the
14 defendant's girlfriend, from April 2004 to mid
15 2005. She testified around February they
16 broke up, there was kind of an on and off
17 relationship, I think through March and April.
18 As you recall, this chiefly came out through
19 the cross, the defendant had a twofold purpose
20 for Valerie: I'm not going to degrade this
21 court about what the defense did to Valerie
22 with that first purpose. But we now know what
23 the second purpose was. The second purpose
24 was access to the Dealer Track program.

25 We know from Valerie's testimony

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2 that the defendant was given four or five
3 leads. She didn't remember the names, she
4 didn't remember who, but leads are a person's
5 credit report. Their names, their personal
6 indentifying information. I suggest, what
7 does she tell you? That this defendant
8 specifically requested people with scores of
9 700 or better because something about him
10 being a mortgage broker. Once again, ladies
11 and gentlemen of the jury, I suggest to you
12 there is no evidence on the record that
13 suggests this defendant ever worked as a
14 mortgage broker, nothing. I suggest to you he
15 was never a mortgage broker. He wanted those
16 leads with 700 and better scores, and we know
17 700 means you have very good to excellent
18 credit.

19 Why did the defendant need leads
20 that high? I suggest because the cars that he
21 was stealing? They weren't Hondas. They
22 weren't 1991 Acuras like maybe some of us
23 drive, they were high-end automobiles,
24 Porsches, 745 BMWs. In the Joseph Sweeney
25 case, we have Range Rovers, Hummers, all cars

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2 well above 50 thousand dollars. To get that
3 kind of financing, you need excellent credit.

4 Valerie's testimony. Mr. Keahon
5 was kind enough to read it back during his
6 closing. He was fascinated with the Dealer
7 Track program. She kept the password and user
8 name by her desktop computer. Whether she did
9 that or gave it to him, ladies and gentlemen,
10 you decide. Remember, his access to the
11 Dealer Track program was through Valerie.

12 Remember, she says how this
13 defendant called her and requested the
14 password and user name from her.

15 Ladies and gentlemen, I suggest we
16 know, Valerie Rodriguez, her testimony is
17 corroborated. We know it because the
18 defendant's cell phone records portray him,
19 Exhibits 48, and here's the spray analysis
20 chart, during the time frame when Valerie says
21 they were dating? A 144 calls to Valerie's
22 home. Sandra Rodriguez, you recall, was
23 Valerie's mother.

24 Ladies and gentlemen, as you would
25 expect from somebody who wants to commit an

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2 identity crime, the witness tells us that the
3 defendant wanted the user name and password to
4 the Dealer Track program.

5 What do we find in the defendant's
6 house? This is 86, from the law offices of
7 Igororak, to Mr. Whitehead. Look at the
8 exhibits.

9 This is the last page. What do you
10 see, EJRegis467Inacole.

11 When you read back Valerie's
12 testimony, she tells you EJRegis was her
13 supervisor. He used his name in the password
14 along with digits and a password with
15 "Inacole", I think she testified to. He had
16 the password on his documents.

17 What do we know the defendant did
18 with that user name and password, ladies and
19 gentlemen? We know because the defendant's
20 computer, people's 151, is in evidence. Det.
21 Friberg has just finished testifying. The
22 defendant accessed the Dealer Track -- he had
23 the Internet shortcut. He had an actual
24 shortcut on his desktop, to get immediately to
25 Dealer Track. And what did he do with that?

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2 He accesses the Dealer Track about a dozen
3 times up there. All on January 26th of 2005,
4 ladies and gentlemen.

5 Ladies and gentlemen the defense
6 briefly touched on -- the Dealer Track
7 information was only in there 30 days that
8 Valerie testified. I suggest it is
9 interesting he uses Valerie as truthful when
10 he wants her, for that 30-day period, but
11 everything else she says isn't to be believed.
12 The fact that this defendant would war drive
13 when she was in the car. The fact that he got
14 leads from her and he asked for passwords, all
15 that is not true. But the one fact, about 30
16 days, it has to be true.

17 But put that aside, ladies and
18 gentlemen. What we know is he was accessing
19 the Dealer Track program web site with that
20 password and user name.

21 How else do we connect this
22 defendant to the crimes?

23 Ladies and gentlemen, you have
24 voice identifications. I'm not going to play
25 those tapes, at least not all the tapes.

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2 You'll hear a few, but we know that all of the
3 contact numbers, on the various loan
4 applications, the Chase E-Loan, Capital One,
5 Commerce, all come back to AeroBeep &
6 VoiceMail Services, located in New York, New
7 York. Kris Taneja testified he told you no
8 i.d. is needed to purchase these blocks of
9 numbers. You can walk off the street and
10 they'll give you a set of numbers.

11 What we do know is this block of
12 numbers starting and that phone number found
13 on the defendant's computer, were all bought
14 by the same person, purportedly a person by
15 the name of John Willson, of One Union Avenue.
16 We know Det. Gabriele investigated but
17 couldn't find a John Willson with that
18 spelling. He couldn't find a One Union Avenue
19 with a residence.

20 Same with Henry Black, ladies and
21 gentlemen, same set of numbers, and it is
22 interesting that the Henry Black account, what
23 I suggest is a fraudulent account, the contact
24 number (914)730-9240, is one of the numbers
25 listed, right there. He used his -- the

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2 contact number as one of the fraudulent
3 numbers he purchased.

4 Then you also have the Anthony
5 Williams. This Anthony Williams, and this
6 Anthony Williams. All these numbers appear,
7 on the various fraudulent applications, ladies
8 and gentlemen.

9 So what do we know? Look at
10 (212)592-0134. What we know is it is found on
11 the David Ridenour Capital One fraud account.
12 It is on the Maria Macarle Internet fraud
13 account. I'll ask Ms. Franzese to get ready
14 to play that recording.

15 It is voice identified by Valerie,
16 Nigel, Anita, and Georgia Fortune.

17 Let's listen to the tape.

18 (The Tape plays)

19 MR. PEARL: There is the David
20 Ridenour, the Capital One account, there is
21 the phone number. The David Ridenour Yahoo
22 account e-mail that was found, I suggest, on
23 the defendant's computer.

24 This is the second page of the
25 First Internet Bank application. There is

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2 that phone number, once again, (516)394-0555.

3 This is one of the phone numbers
4 found in the John Willson block, this contact
5 phone number was used in the Brian Foley Chase
6 fraud account, Exhibit 18, and the contact
7 phone number on the Brian Foley M&T fraud
8 account. Once again, it is voice identified
9 by Valerie, Nigel, Anita and Georgia.

10 The defense never argues any of
11 those weren't able to verify the defendant's
12 voice. I suggest you heard those enough, you
13 probably have them memorized. But it is
14 clearly the same male voice. I suggest it is
15 that defendant's voice.

16 MR. KEAHON: I have to object to
17 what I didn't argue.

18 THE COURT: Thank you. Sustained.
19 Please continue, Mr. Pearl.

20 MR. KEAHON: Can we tell the jury
21 to disregard that, please.

22 THE COURT: Thank you, I will.

23 The jury will disregard the last
24 remark of the people. Commenting on defense
25 counsel's behavior. Thank you.

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2 You may continue, Mr. Pearl.

3 MR. PEARL: Can we play the (516)
4 number, please.

5 (The Tape plays)

6 MR. PEARL: On many levels, we know
7 that is a fraud. For the Empire Blue Cross
8 and Blue Shield, they use the AeroBeep number,
9 and it's the same voice as the first number.

10 As a side note, ladies and
11 gentlemen, the M & T fraud account, there were
12 only four accounts that use M & T. Brian
13 Foley, Briton Lawlor, Brian Smith and Michael
14 Nolan.

15 Remember, James Eriksen testified
16 all those accounts were done over the phone.
17 And on the only paperwork where the defendant
18 was forced to use the phone? We only have
19 male applicants.

20 When the defendant has the
21 anonymity of the Internet, he can be a female
22 or he can be a male. It is perfect for
23 somebody that is going to commit identity
24 theft.

25 The third number, ladies and

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2 gentlemen, is the (718)670-3693 number. It is
3 the contact phone number for the Joseph
4 Sweeney E-Loan fraud account and the Wojcieh
5 Wachnik Sprint fraud account. Once again,
6 identified by Valerie, Nigel, Anita and
7 Georgia.

8 Can we play that last recording?

9 (The Tape plays)

10 MR. PEARL: Ladies and gentlemen, I
11 suggest to you, it is obvious at this point in
12 the trial, those are the three same male
13 voices. Once again the defendant's own phone
14 records betray him. In that time frame, from
15 1/1/04 to 4/24 of 2005, the defendant is
16 calling in to that --

17 MR. KEAHON: I object, "the
18 defendant is calling in".

19 THE COURT: Overruled. Note your
20 exception.

21 MR. PEARL: What I suggest is the
22 personal cell phone is calling into that
23 AeroBeep voicemail number three times, as well
24 as calling into all of those other AeroBeep
25 numbers.

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2 Ladies and gentlemen, this is the
3 Joseph Sweeney, E-Loan account. There is that
4 (718)670-3693 number. Here is the Wojcieh
5 Wachnik Sprint phone records, Exhibit 49.

6 Once again, there is that phone
7 number, in conjunction with that 385 Lexington
8 Avenue. That I suggest we know exactly whose
9 address that is now.

10 What happens again, ladies and
11 gentlemen, the defendant I suggest is so
12 arrogant, he thinks people are not going to
13 pick up on his mistake. His mistake, one of
14 his many mistakes, is he uses what he knows.
15 He uses AeroBeep because he knows it. He has
16 his own AeroBeep account. It is right there,
17 ladies and gentlemen, Exhibit 67-A through D.

18 Lamar Whitehead, he has a
19 Yahoo -- he has a Yahoo e-mail address,
20 Larick26@Yahoo.com, which shows him using
21 what he knows. He knows how to use Yahoo.

22 1305 Park Place, in Brooklyn, New
23 York. We know, ladies and gentlemen, that
24 that is the defendant's address.

25 In evidence as People's 168, the

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2 real estate contract that was recovered from
3 the paperwork the defendant, I suggest,
4 hoarded. His address is 1305 Park Place,
5 Brooklyn, New York, when he was buying 92
6 Howland Avenue.

7 The defendant's own cell phone,
8 ladies and gentlemen, once again betrays him.
9 Defendant is in possession of this cell phone
10 when he's arrested on January 25, 2006. In
11 his house, ladies and gentlemen, is the phone
12 bill of \$1575.44 phone bill for that account
13 number. Once again, as I've already stated,
14 the defendant's personal cell phone, I suggest
15 is calling into all those AeroBeep numbers,
16 all the phones in yellow?

17 Why would the defendant be calling
18 into John Willson, Henry Black and Anthony
19 Williams' accounts? I suggest the answer is
20 obvious.

21 So ladies and gentlemen, that is
22 general. But at this point, I'd like to go
23 into some of the specific counts.

24 I'd like to start with Maria
25 Macarle E-Loan, Exhibit 38, counts two and

1 CLOSING/Mr. Pearl

2 three. Count two, charges the defendant that
3 on or about February 15th of 2005, this
4 defendant assumed the identity of Maria
5 Macarle as a Suffolk County resident, and he
6 did that by using her personal indentifying
7 information, and he obtained property, goods,
8 and services in excess of \$2,000. That is the
9 identity theft under New York Penal Law
10 Section 190.80(1).

11 Count three, ladies and gentlemen,
12 is a second theory to what the defendant did.

13 Once again, most of the elements
14 are the same. That on or about February 15th,
15 2005, in this case, Maria Macarle, the
16 defendant assumed her identity as a Suffolk
17 County resident. They both have the elements
18 of knowingly and with intent to defraud.

19 Ladies and gentlemen, why else
20 would you buy something in another person's
21 name if you didn't intend to defraud?

22 And the last element, on 190.80(3),
23 is that the defendant committed or attempted
24 to commit a Class D felony or higher.

25 The judge will charge you that a

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2 Class D felony or higher is always grand
3 larceny in the third degree. So it is the
4 defendant using those stolen i.d.'s,
5 attempted, committed, or attempted to commit,
6 grand larceny in the third degree, and
7 committed or attempted to steal something in
8 excess of \$3,000.

9 Ladies and gentlemen, the value is
10 never in question. Like we said before, these
11 are all high-end cars, everything is well over
12 two and \$3,000.

13 That is People's 38, the
14 application in the name of Maria Macarle. The
15 date, 2/15/05, this defendant assumed the
16 identity of Maria Macarle, and asked and
17 actually received in this case, a loan from
18 E-Loan in the amount of \$15,000 dollars or
19 approximately. The motorcycle cost around 13
20 and change.

21 The defendant assumed Maria
22 Macarle's name by using her -- identity, by
23 using her name and Social Security number, her
24 personal indentifying information.

25 As a side note, the defendant used

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2 that e-mail address, Maria Macarle Yahoo.com.

3 What else do we know, ladies and
4 gentlemen?

5 King Cycle paperwork is in
6 evidence, 72. There it is, ladies and
7 gentlemen. You know this is the case where
8 Anita Bryant is the defendant's co-defendant.
9 She tells you, number one, she signed this
10 paperwork. Ladies and gentlemen, take this
11 paperwork in the back and take the paperwork
12 in the back, of the Christina Brooks and Maria
13 Macarle checks, People's 29, I believe, those
14 Capital One checks, and look at the signature
15 on these Maria Macarle's -- Anita Bryant's
16 signature, and the signatures of Christina
17 Brooks and David Ridenour. Clearly, they are
18 different people.

19 What does Anita Bryant tell you?
20 She uses the name Maria Macarle, at 436 Cozine
21 Avenue. She tells you the defendant used to
22 live right off of Cozine Avenue. She uses
23 that number because the defendant gives it to
24 her, (718)670-3713.

25 We know the salesman is Frank Wall.

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2 What does Frank Wall tell us, ladies and
3 gentlemen? Well, he tells us that Anita
4 Bryant and a male purchased that motorcycle on
5 March 30, 2005. He corroborates Anita Bryant.

6 He also tells us a male called in
7 that day, he couldn't recall, he said maybe
8 the day before, to set up the sale of the
9 motorcycle, and he prepared the motorcycle.
10 He corroborates Anita Bryant.

11 Mr. Keahon spent a long time
12 talking about Valerie and Nigel. This case
13 isn't built on one witness, two witnesses,
14 three witnesses. There are 55 witnesses that
15 I suggest are all corroborated by the physical
16 evidence.

17 When the judge charges you on
18 witness credibility, he'll tell you I suggest
19 that you could look at whether or not the
20 evidence corroborates the witness to determine
21 if they are credible, or not.

22 Remember Frank Wall told you that
23 the male purchased other items: The helmet,
24 the gloves. Like Anita tells you, there it is
25 on the receipt, exactly what Anita and Frank

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2 Wall tell you.

3 What does Anita tell you? What do
4 we know about Anita. She's i.d.ed by Det.
5 Gabriele, who does what I suggest is some
6 excellent detective work, by putting that
7 Florida license picture on Crime Stoppers.
8 She's identified and ultimately arrested.

9 Anita testified that the defendant
10 was with her at King Cycles and Commerce Bank.

11 Henry Waite's testimony, I suggest,
12 corroborates Anita, as well. He tells you
13 this, that the Florida license was left behind
14 and that the person using that Florida
15 license, I think, in the name of Maria
16 Macarle, ran out, or left the bank. That is
17 exactly what Anita told you on the stand.

18 We also talked about how Frank Wall
19 corroborates Anita. What do we know? The
20 defendant's cell phone calls Anita Bryant
21 three times. I suggest, if you look at the
22 phone records, you'll see most if not all
23 those calls are in March 2005, right around
24 the time of the sale of the motorcycle.

25 What else? People's 109. Anita

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2 Bryant's -- her name is found on a document in
3 the defendant's house. The sticker is over
4 it, suggesting though it is in a cellophane
5 envelope, this clear plastic covering, under
6 that it will say "Lamar Whitehead", and his
7 date of birth.

8 What else do we know, ladies and
9 gentlemen?

10 Here's a piece of evidence the
11 defendant just can't get around.

12 Once again, I suggest his personal
13 cell phone records, betray him.

14 He's calling in to Kings Cycles, on
15 March 30th of 2005, just like Frank tells you.
16 It is completely corroborative.

17 If that is not enough, ladies and
18 gentlemen, we have Police Officer Frank
19 Gallagher. Remember the defense indicated
20 that Det. Gabriele had his mind set, and he
21 was just railroading the defendant. Well,
22 Det. Gabriele tells you he didn't get this
23 case until May 5th of 2005, because of a
24 complaint by Maria Marcale.

25 He doesn't get the defendant's name

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2 until June 2nd, on or about June 2nd, 2005.

3 Because a police officer, Frank Gallagher, he
4 stops the defendant on the motorcycle that's
5 stolen with Maria Macarle's identity. The
6 defendant is in possession of stolen proceeds,
7 ladies and gentlemen. Do you need any more
8 evidence than that? It is Exhibit 69.

9 There is the motorcycle. These are
10 the pictures, ladies and gentlemen.

11 The defendant's in possession of
12 the stolen merchandise.

13 What do we know, ladies and
14 gentlemen? We know it is a stolen motorcycle.
15 There is the VIN number. There is the VIN
16 number from the Kings Cycle paperwork.

17 There is the VIN number from the
18 E-Loan -- fraudulent E-Loan account, in the
19 name of Maria Macarle.

20 Every piece of evidence in this
21 case, every witness who testified, is
22 corroborated by each other.

23 What else do we know? As if that
24 is not enough, with counts two and three, I
25 suggest ladies and gentlemen, it is getting to

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2 the point where it is overwhelming.

3 Then we have Det. Friberg testify
4 on computer evidence. We know from the
5 exhibits, and Det. Friberg testified, the
6 defendant had Nigel DeFreitas's IP on his
7 computer.

8 The cookie, which I suggest ladies
9 and gentlemen is the DNA of computers. As
10 Det. Friberg told us, it is a unique
11 indentifying number generated by E-Loan, and
12 sent to the computer, that makes this
13 application. The user doesn't even know that
14 sometimes a cookie is being put on their
15 computer. What we know, as well, is that
16 Maria Macarle at Yahoo dot com is used on the
17 E-Loan. This is the E-Loan paperwork. There
18 is the cookie, ladies and gentlemen. It is an
19 exact match.

20 This is the evidence from Det.
21 Friberg, its hard to see, but there is the
22 defendant accessing the Maria Macarle Yahoo,
23 from his personal laptop, I suggest.

24 Ladies and gentlemen, that is the
25 IP -- that is the cookie that was taken off

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2 the defendant's computer. An exact match.

3 How do we know it's the defendant's
4 laptop, ladies and gentlemen? People's 15.

5 What do we know about the
6 defendant's laptop? One, it is recovered from
7 the defendant's -- what I suggest is the
8 defendant's house, in Teaneck. Here is the
9 laptop, ladies and gentlemen, People's 151.
10 Det. Friberg tells you that the laptop case,
11 is found in the defendant's -- the Range Rover
12 the defendant is in possession of when he's
13 arrested. Remember, there was personal
14 paperwork of the defendant found in that
15 laptop case. It is a perfect fit, ladies and
16 gentlemen, the laptop and the laptop case.

17 The wireless Internet card, ladies
18 and gentlemen. Is in the computer. What do
19 we know about this wireless Internet card that
20 Det. Friberg told you? It allows the
21 defendant to hook into the Internet. That, I
22 suggest, is war driving. Once again, this
23 computer is filled with the defendant's
24 personal information.

25 There is the defendant's house.

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2 There is the computer. This is the computer
3 that was found in the defendant's house. Mr.
4 Keahon wants a videotape? Well, there he
5 goes, he has some photographic pictures of all
6 the evidence. Evidence establishing that it's
7 the defendant's computer.

8 Well, ladies and gentlemen, if I
9 drop my wallet, when you pick it up, how would
10 you determine it is my wallet? You open it
11 up, look in it, see pictures of my kid, my
12 credit cards, which I suggest is exactly what
13 you do when you find a computer, for any item
14 on it, the defendant keeps pictures of himself
15 and his family.

16 On the computer, ladies and
17 gentlemen, is the profit and loss statement of
18 Lamar Whitehead. On the computer, is a credit
19 application in the name of Lamar Whitehead,
20 with his present address of 92 Howland Avenue
21 in Teaneck, New Jersey, right where the
22 computer was seized from.

23 On his computer, in his documents
24 folder, was Lamar Whitehead vs. Mortgage
25 Electronic Systems, where he lists, he's Lamar

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2 Whitehead, and his address.

3 What do we know about the web sites
4 visited by the defendant? You couldn't ask
5 for anything better, ladies and gentlemen.
6 Who goes to Ancestry.com and looks up the
7 ancestry of Lamar Whitehead, John Willson,
8 Henry Black?

9 We also have the Dealer Track icon
10 on his desktop. We have the defendant
11 accessing Dealer Track.

12 Nothing on this computer comes back
13 to anyone but the defendant and the victims,
14 ladies and gentlemen.

15 There it is, ladies and gentlemen.
16 There is the Ancestry.com Lamar
17 Whitehead -- Miller White White Miller
18 Yahoo.com. That is his second Yahoo e-mail
19 address. He's quite familiar with how to use
20 Yahoo e-mail, I suggest to you.

21 There is, once again, the shortcut
22 to the Dealer Track program. And this is what
23 the defendant did when he had access to the
24 Dealer Track with that password, we now know
25 he had from People's 86. He accessed Dealer

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2 Track.

3 Let's move on, ladies and
4 gentlemen -- let's go back. Ladies and
5 gentlemen, it is overwhelming, counts two and
6 three. That this defendant committed the
7 identity theft using the name of Maria
8 Macarle.

9 Remember, all these counts, are
10 cross-referenced because the AeroBeep numbers
11 are all bought in the same block, by the same
12 number. So the Maria Macarle phone number and
13 another number bought in that same block,
14 shows up on Nerina Sperl. So they all
15 criss-cross.

16 What do we know about the Nerina
17 Sperl fraud? This is count eight. This is
18 People's 23. This is the person to person
19 transaction of Nerina Sperl. The date, 2/15
20 of 2005. The personal indentifying
21 information of Nerina Sperl is used, her name
22 and Social Security number.

23 Once again, that Yahoo e-mail
24 address.

25 This is it, ladies and gentlemen.

1 CLOSING/Mr. Pearl

2 There it is. That is her name, Social
3 Security number, her date of birth, and there
4 is -- there is her -- that Yahoo e-mail.

5 The defendant made an application
6 for a 55 thousand dollars loan, which is well
7 over the \$3,000 threshold of the attempted
8 grand larceny in the third degree. Remember,
9 this one didn't get funded. So this an
10 attempted grand larceny. Remember, "committed
11 or attempted to commit grand larceny in the
12 third degree." He attempted to get the
13 \$55,000 loan.

14 There we go again. There is the
15 cookie and the IP address. We've gone through
16 this. The cookie, the DNA of the computer
17 world, is found on the defendant's computer.
18 The Capital One check, payable to the order of
19 Rhonda Ghassabian, \$55,000. Nerina Sperl.

20 Certainly, have you ever seen
21 anybody write a check with the word "zero
22 cents"? I suggest it is a unique identifying
23 marker of the defendant. This was recovered
24 from the defendant's house, his checkbook,
25 which is in evidence. Take a look at it,

1 CLOSING/Mr. Pearl

2 "zero cents". You don't need to be Jeff
3 Luber. I suggest that is a perfect match.

4 The defendant's jacket, ladies and
5 gentlemen. He had that moment in the
6 courtroom, which is kind of like the
7 fingerprint moment, when the defendant puts
8 the jacket on in the courtroom. We know that
9 the jacket is recovered from the defendant's
10 Range Rover. Those exhibits, 96 through 106.
11 There, is his Range Rover. There is the
12 jacket in the back. Right with the gas can
13 and that laptop case.

14 Remember the defendant put this
15 jacket on in the courtroom. Ladies and
16 gentlemen, I suggest to you, it was a perfect
17 fit. Did you notice the one thing the
18 defendant did when he put the jacket on, he
19 put the jacket on and pulled up the sleeves.
20 Like he's worn that jacket a thousand times.
21 I suggest he did that because he has worn that
22 jacket a thousand times. What do we find in
23 the pocket of the defendant's jacket?

24 I'll grab People's 126. Ladies and
25 gentlemen, this is literally what was found in

1 CLOSING/Mr. Pearl

2 defendant's jacket. It is right there. What
3 is better, the defendant gift-wrapped, he
4 literally gift-wrapped this evidence for us.

5 This is how it was found, in the
6 jacket, 126-A. You open it up, ladies and
7 gentlemen, you keep opening it, it is the
8 paper -- but he gift-wrapped it -- it's a
9 traffic summons in the name of Lamar
10 Whitehead. It's not his jacket, but what is
11 in his jacket. It has his name and date of
12 birth. Literally, ladies and gentlemen, he
13 gift-wrapped this piece of evidence for us.

14 What do we know is on this
15 document? Well, in the paperwork, Nerina
16 Sperl, Porsche Cayenne, 2004. It is the same
17 vehicle identification number. Rhonda
18 Ghassabian, testified that is her date of
19 birth, that is her Social Security number.
20 Why does the defendant have a Tennessee
21 resident's personal indentifying information
22 in his jacket pocket?

23 If that is not enough for you,
24 ladies and gentlemen, Jeff Luber, the
25 handwriting expert, analyzed the -- you'll see

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2 this Jayson Wilco notary stamp, on a lot of
3 the paperwork.

4 Nobody testified from the
5 Department of State but in evidence, is
6 People's 190? Is an affidavit from the
7 department of state, Jayson Wilco, with the
8 number, that doesn't exist. It is a
9 fraudulent notary stamp, ladies and gentlemen.
10 It is on a lot of the paperwork. That, I
11 suggest, is another way they all criss-cross
12 each other.

13 So what do we know? The
14 defendant's handwriting is authenticated by
15 Jeff Luber on that paperwork. Kwik Digital,
16 ladies and gentlemen. What do we know about
17 the Kwik Digital document? Tunde Ojo
18 testified. He came in. What does he tell
19 you? The Paperwork is faxed from Kwik
20 Digital. Everything from Kwik Digital was
21 faxed from his address. He told you he faxed
22 paperwork from Kwik Digital during the same
23 time frame as these identity thefts. Kwik
24 Digital cards are found in the defendant's
25 Range Rover, and his home. Once again, he

1 CLOSING/Mr. Pearl

2 hoards paperwork. Because of that, he leaves
3 a trail. There they are, Exhibit 94 and 95,
4 ladies and gentlemen.

5 But ladies and gentlemen, there
6 still is more evidence. The cookie on the
7 Nerina Sperl case comes back to the
8 defendant's laptop. Nerina Sperl's e-mail is
9 found on the defendant's computer. Why is the
10 defendant's computer accessing Nerina Sperl a
11 Yahoo.com? They have no knowledge of each
12 other --

13 I shouldn't say that. The
14 defendant has knowledge of her personal
15 indentifying information, Nerina Sperl has no
16 knowledge of this defendant. Let's move on to
17 count -- once again, I submit to you, it is
18 overwhelming evidence as to count eight.

19 We'll move on to the Nouri Khabeih,
20 counts nine and ten. Count nine is identity
21 theft in the first degree. The defendant is
22 charged once again, under 190.80(3), the
23 defendant assumed the identity of Nouri
24 Khabeih. This is a little different, ladies
25 and gentlemen. This is within the

1 CLOSING/Mr. Pearl

2 jurisdiction of Suffolk County. He assumed
3 the identity of Nouri Khabeih by using Nouri
4 Khabeih's name, his personal indentifying
5 information, and with that, this defendant
6 committed or attempted to commit, a class D
7 felony or higher.

8 The attempt to commit grand larceny
9 is the attempt to steal that \$55,000 Range
10 Rover from Land Rover of Massapequa.

11 Count ten, is attempted grand
12 larceny in the second degree. That charges
13 the defendant on or about -- and this is
14 around October 14th of 2004, once again within
15 the jurisdiction of Suffolk County, the
16 defendant attempted to steal that Range Rover
17 from Land Rover of Massapequa.

18 Ladies and gentlemen, there is a
19 stipulation in evidence that within the
20 jurisdiction of Suffolk County, Land Rover of
21 Massapequa is within 500 yards of the Suffolk
22 County border, and it is in Nassau County.
23 Clearly, it is an adjoining county.

24 Ladies and gentlemen, the judge
25 will tell you that the power to prosecute is

1 CLOSING/Mr. Pearl

2 because we are within 500 yards of Suffolk
3 County. That element is a given. So what do
4 we know, ladies and gentlemen? This is the
5 paperwork from Land Rover Massapequa.

6 The defendant's fingerprints are
7 all over this paperwork, ladies and gentlemen.
8 This is exhibit 21. Karen Ensalata tells us,
9 she's the fingerprint expert. This goes back
10 to what I consider -- from what I suggest the
11 defendant is trying to divert your attention.
12 What was the whole questioning about the FBI?
13 It was meant to try to bring you over here.
14 The fingerprints are devastating. The
15 defendant has four fingerprints on this
16 paperwork. How does the defendant's
17 fingerprint get on the paperwork? They can't
18 answer that question, so we'll try to district
19 you with the FBI, just like with the Cherokee
20 that he does with Nigel DeFreitas.

21 Once again, the right thumb is on
22 the outside of the manila folder.

23 The left thumb, the outside of the
24 manila folder. The right index is inside the
25 manila folder. The left thumb, is on the

1 CLOSING/Mr. Pearl

2 GEICO paperwork. Remember, Det. Miller
3 testified the defendant is right-handed.
4 Let's look. Ladies and gentlemen, this is
5 just like if you were going to come in and
6 drop paperwork down and you wanted to open up
7 the paperwork? You're a right-handed person.
8 You pick up the paperwork. You leave the left
9 thumb imprint.

10 Just like a right-handed person,
11 with a little piece of evidence that once
12 again corroborates the rest of the testimony.

13 Ladies and gentlemen, that is the
14 right thumb. This was for demonstrative
15 purposes.

16 It is Exhibit 93. Remember, these
17 are only 10 matching points. Ms. Ensalata
18 told you there were 23 matching points. If
19 that wasn't enough, the thumb print that she
20 took in this courtroom, she testified to, was
21 a match to that print, ladies and gentlemen.

22 What do we know? Robert O'Shinsky,
23 Land Rover. He tells you in October 2004, in
24 this time frame, there was an attempted sale
25 of a \$55,000 Range Rover. A young male

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2 attempted to set up the deal indicating he was
3 purchasing the vehicle for his aunt. Remember
4 that testimony? He talked about a young male.
5 He didn't talk about a male with an accent,
6 like the real Nouri Khabeih. He talked about
7 a young male.

8 What else do we know, ladies and
9 gentlemen? Well, once again, see this
10 fraudulent notary stamp, again? What do we
11 have? Nouri Khabeih, 371 Main Street,
12 Hartford, Connecticut. What do we find,
13 ladies and gentlemen? In his house, take a
14 look at the pictures, defendant once again
15 puts his picture on the evidence for us, right
16 here, ladies and gentlemen, People's 175. The
17 defendant uses 371 Main Street, "Harford".
18 Because he's a poor speller doesn't mean that
19 he didn't do this transaction, ladies and
20 gentlemen. I suggest you'll see he's a poor
21 speller in many areas. How do you get around
22 that evidence, ladies and gentlemen? This
23 random Connecticut address turns up in his
24 house, with his picture on the i.d.? You
25 couldn't ask for better evidence.

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2 Hartford is spelled incorrectly.

3 This corroborates the testimony of Anita
4 Bryant. She told you she received those
5 fraudulent i.d.'s from the defendant: A
6 license, New York State license, and the
7 Florida license. She also testified to the
8 Christina Brooks license. This defendant, I
9 suggest, has a fraudulent identification for
10 this house in Connecticut. We know it is
11 wrong, because he spells "Hartford" wrong.

12 As if it is not enough, ladies and
13 gentlemen, we have another piece of evidence.
14 He uses that (718)512-5016 number, the
15 AeroBeep phone number Henry Black account,
16 take a look at the spray analysis chart. The
17 defendant's cell phone calls into that number.

18 What do we know, ladies and
19 gentlemen? The Sprint cell phone
20 (346) 623-1549, is count sixteen. What we
21 know, ladies and gentlemen, is the Sprint cell
22 phone is in the name of Wojcieh Wachnik.

23 Between 10/14 of 2004 and 10/25 of
24 2004, that phone -- this phone, ladies and
25 gentlemen, People's 152, we know it is the

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2 phone. We find it in his house, because the
3 electronic serial number is right on the
4 phone. Once again, he has a phone that was
5 used with the stolen i.d. of Wojcieh Wachnik
6 in his house. It crosses over with the Land
7 Rover of Massapequa deal.

8 There is the electronic serial
9 number, ladies and gentlemen. If you want to
10 look, you find it right on that phone.

11 That cell phone was opened with
12 that phone number and that address. We know
13 that is Teisha Lamont's address. AeroBeep
14 with voice i.d. Once again, it is a confirmed
15 fraud account.

16 The evidence from the defendant's
17 house, ladies and gentlemen. All comes from
18 these bags. What do we know? We know it is a
19 certified certified deed, copy of a deed and
20 appraisal, real estate contract, utility bill,
21 Rent-A-Center paperwork. Here it is, ladies
22 and gentlemen. The deed, the gas bill, the
23 Rent-A-Center paperwork, all addressed to
24 Lamar Whitehead, at 92 Howland Avenue.

25 Defendant's Range Rover towing

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2 receipt, which is in evidence, the service on
3 the Range Rover and traffic summons. There it
4 is, ladies and gentlemen, 7/27. It has the
5 license plate DCN-7725.

6 On 7/27, the defendant is in
7 possession of the Range Rover. He tows it to
8 this place in Manhattan, and there, that car
9 is towed there. We know despite the fact
10 there is a different plate number on that car
11 now, ladies and gentlemen, remember now there
12 is a Pennsylvania plate. We know that is the
13 same car. Because the police took the VIN
14 number off it. An exact match.

15 So what evidence do we recover from
16 the defendant's house? David Ridenour
17 paperwork, ladies and gentlemen. He has Mr.
18 Ridenour, a Tennessee resident, paperwork in
19 his house.

20 With that, Apartment 4-B. Once
21 again, we know now that that is Teisha
22 Lamont's, ladies and gentlemen, that is her
23 phone number. Anita Bryant confirms her voice
24 in the AeroBeep accounts. The two phone
25 accounts, Lucia Green and Kathleen Leads, that

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2 is Teisha Lamont, his little sister. The
3 defendant's personal cell phone calls in 85
4 times, ladies and gentlemen. When he's
5 arrested and 1:25:06, who was the first person
6 he calls? His sister, Teisha. He wants his
7 sister to pick up his Range Rover.

8 Exhibit 37. Other paperwork. This
9 is just random paperwork that connects him to
10 the rest of the identity thefts, ladies and
11 gentlemen. I won't go through every one.
12 We've already been here an hour and a half.

13 Lamor Miller. La-La Records,
14 123-99 Flatlands Avenue. The address used on
15 Gloria Conaty's Capital One fraud, count 26,
16 and the Gloria Conaty E-Loan account.

17 The business card found in the
18 defendant's house. As an E-Loan. What do we
19 know about this business card, ladies and
20 gentlemen? He wrote the vehicle
21 identification number for the one on the
22 Joseph Sweeney E-Loan, ladies and gentlemen, I
23 suggest this is one of the actual grand
24 larcenies, where this car went off the lot, a
25 BMW 745I. He has a vehicle VIN on business

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2 cards at his house. Counts 11 and 12.

3 We already talked about the
4 Connecticut i.d.

5 The back of another business card
6 in the defendant's house, ladies and
7 gentlemen. This is great. He has the phone
8 number, that AeroBeep number. I suggest,
9 clearly, that is his handwriting, there, where
10 he calls in from his personal phone. AeroBeep
11 phone number would be the Joseph Sweeney
12 E-Loan, Wojcieh Wachnik identified by all four
13 people, again.

14 Right there.

15 Wojcieh Wachnik, Social Security
16 number. The number on the back of this
17 business card found in the defendant's house.

18 Con Ed bills, ladies and gentlemen.
19 Here is interesting evidence. Recovered
20 from -- well, the template recovered from the
21 defendant's vehicle.

22 This is the Con Ed bill in the name
23 of David Ridenour. The Con Ed bill in the
24 name of Maria Macarle. It is hard to read,
25 Exhibits 27 and 28. Both faxed from Kwik

1 CLOSING/Mr. Pearl

2 Digital, the same bill, the same account
3 number. The same information on the Con Ed.

4 Here is the template, ladies and
5 gentlemen, found in the defendant's vehicle,
6 the same bill. The personal identifying
7 information used on the fraudulent Maria
8 Macarle and David Ridenour accounts. The
9 information is found in the defendant's
10 vehicle.

11 Now, we know, ladies and gentlemen,
12 that this defendant likes to cut and paste,
13 and that is his common plan and scheme, that
14 is his M.O.

15 The Power Point doesn't do justice
16 to People's 176-A. Katherine Reid testified.
17 The defendant was actively in the process of
18 cutting and pasting documents, ladies and
19 gentlemen. He left this evidence behind for
20 us.

21 Here, the defendant didn't talk
22 about this, ladies and gentlemen, it is
23 devastating. Here is the final product that
24 put the cut and paste from the photocopy
25 machine, you get the final product. This is

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2 exactly, ladies and gentlemen, what the
3 defendant did with those Con Ed bills. What a
4 coincidence, Katherine Reid's name is used
5 with the AeroBeep number, (212)561-1482.

6 Jeff Luber, the handwriting expert.
7 What does he tell us? This was his chart,
8 ladies and gentlemen. Mr. Keahon doesn't
9 think it is a match.

10 Well, let's look at the three.
11 Like Georgia Fortune told you, the defendant
12 writing with two capital letters in the
13 beginning of the word? Zero cents is all over
14 the questioned documents, and the known --
15 what I suggest is the known handwriting of
16 Lamar Whitehead.

17 Look at the Brooklyns, ladies and
18 gentlemen. They are almost perfect matches.
19 You don't need to be Jeff Luber. I suggest
20 you can make the determination. Ladies and
21 gentlemen just to talk about what I suggest is
22 this defendant's phonetic challenge. He can't
23 spell the word "thousand dollars" right on
24 Hillside Rides, no one verified the
25 handwriting of the defendant, Mr. Keahon made

1 CLOSING/Mr. Pearl

2 this big -- the defense argued about George
3 Fortune who was called in the last two weeks.
4 This is one of the verified handwriting
5 exemplars of the defendant. Ladies and
6 gentlemen, a check signed by Lamar Whitehead.
7 This is zero cents. Here is a Western Union
8 template, signed by Lamar Whitehead. We know
9 the defendant's a rapper. La-La Records at
10 123-99 Flatlands Avenue. This is some of his
11 rap music. This is what Jeff used to verify
12 the defendant's handwriting on all the
13 questioned documents.

14 What do we know? The Moneygram,
15 Exhibit 36, count five of this Indictment,
16 defendant handwriting.

17 The Maria Macarle, Christina Brooks
18 check, Exhibit 29, counts two and four.
19 Defendant's handwriting.

20 Defendant's handwriting. That zero
21 cents all over again. This I-check deposit,
22 into accounts opened by Anita Bryant. The
23 defendant wanted her to withdraw from that
24 \$17,000. The Joseph Sweeney check, the
25 Hillside Rides. The defendant's handwriting.

1 CLOSING/Mr. Pearl

2 The fax cover sheet on the Maria
3 Macarle First Internet Bank, for count five.
4 Defendant's handwriting.

5 Fax from Kwik Digital.

6 The Briton Lawlor check, ladies and
7 gentlemen. Count 17.

8 We know that Kylie Copeland
9 a -- this is what led to Kylie Copeland's
10 conviction. His fingerprint was on the check.
11 What does Mr. Luber tell us, defendant's
12 handwriting, the same "cents", just like in
13 all the other documents, ladies and gentlemen.

14 What else do we know about this
15 defendant's connection to Kylie Copeland,
16 ladies and gentlemen? There was that
17 document, remember it said 31 Fleet Walk
18 Avenue, in Brooklyn, New York? Well, remember
19 Det. Gabriele -- I don't have the exhibit in
20 front of me, Det. Gabriele testified that that
21 is the address Kylie Copeland provided at the
22 time of his arrest? It turns up on paperwork,
23 once again, in the defendant's house, with his
24 name "Lamor Miller", and the address provided
25 by Kylie Copeland.

1 CLOSING/Mr. Pearl

2 Det. Friberg analyzed the
3 defendant's laptop with the wireless Internet
4 card. It corroborates Valerie Rodriguez'
5 testimony of the defendant's war driving.

6 Nigel DeFreitas and Michael
7 Redman's IP addresses on the defendant's
8 computer, E-Loan cookies, the DNA of this
9 case, are found on the defendant's computer.

10 There is the cookie, ladies and
11 gentlemen. There -- this is the E-Loan
12 paperwork. Gerald Thurman cookie. Gloria
13 Conaty, and Raymond Sperl, 2005. Raymond
14 Sperl, also, was victimized in 2000. All on
15 the defendant's laptop.

16 Yahoo e-mails on the defendant's
17 computer. David Ridenour, Brenda Ridenour,
18 Tod Ghassabian, Nerina Sperl, Joseph Sweeney.
19 Here they are, David Ridenour's on his
20 computer from the Capital One records. Brenda
21 Ridenour one eleven, on his computer. She's
22 from Tennessee, just like David Ridenour.

23 Tod Ghassabian, another one of our
24 friends from Tennessee.

25 Nerina Sperl, there it is, from the

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2 bank paperwork.

3 Joseph Sweeney, that is from the
4 E-Loan paperwork, that AeroBeep.

5 Remember, ladies and gentlemen, it
6 is spelled Joseph S-W-N-Y? Joseph S-W-N-Y
7 he's accessing Joseph Sweeney's e-mail
8 account, that he opened, on his computer.

9 Ladies and gentlemen, count 1 of this
10 indictment is scheme to defraud in the first
11 degree. I suggest to you the evidence has
12 proven the defendant is guilty beyond a
13 reasonable doubt.

14 We've shown that this defendant
15 engaged in a systematic and ongoing course of
16 conduct, Be engaging in a scheme with the
17 intent to defraud. He uses people's
18 identities to try to steal from other persons.
19 And he obtained property in excess of \$1,000
20 dollars from at least one person.

21 Ladies and gentlemen, the judge
22 will tell you a person, as defined in the law,
23 can be a human being. It could be a public or
24 private corporation. The identifiable person
25 there's many E-loans. This defendant stole

1 CLOSING/Mr. Pearl

2 that motorcycle using a funded check from
3 E-loan. Identity theft in the first degree,
4 is 190.80(1), counts 2, 11 and 15. The
5 evidence shows the defendant assumed the
6 identity of Maria Macarle, which is count two;
7 Count 11, Joseph Sweeney; count 15, Wojcieh
8 Wachnik.

9 These were three funded cars,
10 ladies and gentlemen, totalling well over 100
11 thousand dollars unaccounted for. Well, a
12 \$15,000 dollars motorcycle was ultimately
13 recovered.

14 He assumed the identity of the
15 victim, used their personal indentifying
16 information, their name, Social Security
17 numbers, knowingly and with intent to defraud.
18 I suggest it is clear from the scheme this
19 defendant was engaged in, he obtained property
20 in excess of \$2,000. All of the automobiles
21 are in excess, well in excess of \$2,000.

22 Every count in this indictment is
23 190.80(3). This defendant assumed the
24 identity of the various victims, as a Suffolk
25 County resident, with the exception of Nouri

1 CLOSING/Mr. Pearl

2 Khabeih, by using their personal indentifying
3 information.

4 He did so knowingly and with the
5 intent to defraud, and then he committed or
6 attempted to commit a Class D felony or
7 higher. If he attempted to steal anything in
8 excess of \$3,000, it's grand larceny in the
9 third degree.

10 If a person attempts to steals
11 something in excess of \$3,000, all it means is
12 he did more than just planning and
13 preparation. He came dangerously close to
14 completion. The theft need not have been
15 completed, ladies and gentlemen, but for these
16 financial institutions picking up on the
17 fraud, I suggest each and every one would have
18 been funded, ladies and gentlemen. Just -- it
19 was well beyond the planning and preparation
20 phase. He went well beyond that.

21 So what do we know, ladies and
22 gentlemen? We have multiple identity thefts.
23 We have Valerie Rodriguez who testified.
24 Anita Bryant. Nigel DeFreitas, Georgia
25 Fortune, they all identified this defendant's

1 CLOSING/Mr. Pearl

2 voice. Valerie Rodriguez had him war driving.
3 The co-defendant tells you what he was doing.
4 Tunde Ojo, from Kwik Digital, told you a
5 person matching this defendant's description
6 was at Kwik Digital.

7 Robert O'Shinsky, Frank Wall, Chris
8 Taneja of AeroBeep. Ken Scales, remember Ken
9 Scales' testimony on cross-examination? A
10 male was calling into many of these fraudulent
11 applications? That came out on cross. Have a
12 readback. He corroborates.

13 Karen Ensalata, the expert. Jeff
14 Lubber, the handwriting expert. Dan Jensen,
15 who tells us about the electronic serial
16 number on the phone. The phone is found in
17 the defendant's house. Det. Friberg finds the
18 cookies on the defendant's computer, as well
19 as the Yahoo e-mail address. All the search
20 warrant items from the home, and the
21 defendant's car, all lead back to the
22 defendant. All roads lead to this defendant,
23 ladies and gentlemen.

24 Ladies and gentlemen, I suggest
25 this case is overwhelming. We proved this

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2 case well beyond a reasonable doubt, to the
3 point where I suggest there is no doubt.

4 I asked you to hold to your oaths,
5 Assistant District Attorney Franseze and I
6 have proved this case to you and we ask you to
7 do your job now, and take this one-man crime
8 spree that is Lamar Whitehead, and find him
9 guilty on each and every count.

10 Thank you.

11 THE COURT: Thank you, Mr. Pearl.

12 Ladies and gentlemen, in light of
13 the hour, it is 25 to seven, and the length of
14 the court's charge to you on the law, you'll
15 be recessed till tomorrow morning, at 9:00
16 o'clock.

17 At which time I will charge you on
18 the law, and then you'll retire for your
19 deliberations. Notwithstanding the fact that
20 both sides have rested and you have heard the
21 eloquence of both counsel, the admonitions
22 remain in full force and effect.

23 I remind you not to form or express
24 an opinion about the case until submitted to
25 you for deliberations. As I've told you, do

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2 not discuss this case or any matter connected
3 to the trial amongst yourselves or with anyone
4 else. Nor may you allow it to be discussed in
5 your presence.

6 Don't read or listen to accounts
7 reported in the news media, don't visit or
8 view the place or places where the offense
9 charged was allegedly committed or any other
10 place involved in this case, and promptly
11 report to the court by way of coming to me
12 personally, through a court officer, any
13 incident within your knowledge involving any
14 attempt to influence any member of the jury.
15 Thank you, once again, for your patience and
16 your hard work.

17 I'll see you tomorrow morning at
18 9:00 o'clock.

19 (The Jury is excused)

20 THE COURT: Thank you. Please be
21 seated. We'll wait for the door to close.

22 Thank you, officer. Outside the
23 presence of the jury, is there anything to
24 place on the record at this time?

25 MR. KEAHON: No, your Honor.

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2 MR. PEARL: No.

3 THE COURT: The record will reflect
4 that the court did have a conference with
5 defense counsel and the people regarding the
6 proposed charge. In light of the hour,
7 immediately before the court charges the jury
8 tomorrow, you have copies of the court's
9 proposed charge in your possession at this
10 time, which after our conference I did
11 incorporate certain suggestions by defense
12 counsel and by the people.

13 I'll hear specific objections to
14 same prior to the charge being administered.

15 9:00 a.m., thank you very much.
16 The court wishes to compliment Mr. Keahon and
17 Mr. Pearl for their outstanding eloquence in
18 their closing arguments before the court. It
19 does credit to the profession of law.

20 Thank you. Thank you.

21 Mr. Whitehead, I'll see you
22 tomorrow morning, 9:00 o'clock.

23 -o0o-

24

25

1 People v. Lamar Whitehead

2
3
4 C E R T I F I C A T E

5
6 I, JENNIFER MAUE, a Senior Court
7 Reporter, do hereby certify, that the
8 foregoing matter is a true and accurate
9 transcription of my shorthand notes.

10 IN WITNESS WHEREOF, I have hereunto
11 set my hand.

12
13 
14 JENNIFER MAUE